

1 STATE OF MINNESOTA DISTRICT COURT

2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

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4 The State of Minnesota,

5 by Hubert H. Humphrey, III,

6 its attorney general,

7 and

8 Blue Cross and Blue Shield

9 of Minnesota,

10 Plaintiffs,

11 vs. File No. C1-94-8565

12 Philip Morris Incorporated, R.J.

13 Reynolds Tobacco Company, Brown

14 & Williamson Tobacco Corporation,

15 B.A.T. Industries P.L.C., Lorillard

16 Tobacco Company, The American

17 Tobacco Company, Liggett Group, Inc.,

18 The Council for Tobacco Research-U.S.A.,

19 Inc., and The Tobacco Institute, Inc.,

20 Defendants.

21 - - - - -

22 DEPOSITION OF RICHARD M. SANDERS

23 Volume I, Pages 1 - 140

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1 (The following is the deposition of RICHARD
2 M. SANDERS, taken pursuant to Notice of Taking
3 Deposition, under Rule 30.02(f), at the offices of
4 Womble, Carlyle, Sandridge & Rice, PLLC, 3300 One
5 First Union Center, 301 South College Street,
6 Charlotte, North Carolina, commencing at
7 approximately 8:37 o'clock a.m., April 18, 1997.

8 APPEARANCES:

9 On Behalf of the Plaintiffs:

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C O N F I D E N T I A L

4

1 I N D E X

2 EXHIBITS DESCRIPTION PAGE MARKED

3 Plf's 54 Letter dated June 21, 1996,

4 Redgrave to Gordon,

5 with attachment 106

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1 P R O C E E D I N G S

2 (Witness sworn.)

3 RICHARD M. SANDERS

4 called as a witness, being first duly
5 sworn, was examined and testified as
6 follows:

7 ADVERSE EXAMINATION

8 BY MR. FINZEN:

9 Q. Would you please state your full name and
10 address for the record.

11 A. Richard M. Sanders. My address is DELETED.

12

13

14 Q. And by whom are you employed?

15 A. I'm employed by R. J. Reynolds Tobacco Company.

16 Q. How long have you been employed by them?

17 A. Since June of 1977; 20 years.

18 Q. Mr. Sanders, we met a moment ago. My name is
19 Bruce Finzen, and along with my partner, Dan
20 O'Fallon, we're two of the counsel for plaintiffs
21 State of Minnesota and Blue Cross Blue Shield in a
22 lawsuit that has been brought where one of the
23 defendants is R. J. Reynolds.

24 Do you understand today that you're here to give
25 testimony in that case by deposition?

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1 A. Yes, sir, I do.

2 Q. And I want to just go over a couple of ground
3 rules that we'll have for the deposition. If at any
4 time I'm asking a question that you don't understand
5 or it's not clear to you, please ask me to rephrase
6 the question so that I can get your truest and best
7 answers to the questions that I raise today. Would
8 you do that, please?

9 A. Yes, sir.

10 Q. Also, I would ask you to wait until I finish the
11 question before you start to answer, and I'll try to
12 wait until you finish your answer to ask the next
13 question, so that we don't overlap on the -- on the
14 deposition transcript, which is difficult for the
15 reporter when we talk over one another. Will you do
16 that?

17 A. Yes, sir.

18 Q. And then you'll have to answer all questions
19 verbally with a "yes" or a "no" or some words. The
20 nod of the head the -- the camera can take down, but
21 the reporter has a hard time taking that down.

22 Have you had your deposition taken before?

23 A. I've had a deposition taken before, yes.

24 Q. In relation to your work at R. J. Reynolds
25 Tobacco?

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1 A. Yes, sir.

2 Q. And when would that have been?

3 A. Approximately 15 years ago. And it was in a
4 case regarding somebody that was suing our
5 advertising agency.

6 Q. Have you had your deposition taken in any
7 litigation related to tobacco litigation?

8 A. No, sir.

9 Q. Now what is the current position that you hold
10 at R. J. Reynolds Tobacco?

11 A. I'm vice-president of sales for the western
12 sales area.

13 Q. And what does that area entail?

14 A. Geographic --

15 It's a geographic responsibility for our sales
16 organization. Roughly speaking, if you drew a line
17 from Houston, Texas to the middle of Montana, pretty
18 much everything west of that line is the geography
19 I'm responsible for.

20 Q. And to whom do you report?

21 A. I report to Jim McGuire, who is the senior
22 vice-president of sales for R. J. Reynolds Tobacco
23 Company.

24 Q. How many people do you have under your direct
25 responsibility as the vice-president of sales for the

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1 western region?

2 A. Roughly 450 to 500.

3 Q. In what kinds of positions?

4 A. All sales positions.

5 Q. Are there --

6 Is there a difference in R. J. Reynolds Tobacco
7 between sales positions, or are they -- is there one
8 title that encompasses --

9 A. Oh, no. We're a hierarchical structure, so
10 you'd have myself as a -- as a vice-president. I
11 have four regional managers; that geography is
12 divided up into four regions. Each of them then has
13 four to five, possibly six division managers,
14 depending upon the specific geography. And the rest
15 of the people in the organization would either be
16 sales reps or retail reps.

17 Q. What's the difference between a sales rep and a
18 retail rep?

19 A. Sales representative is responsible for selling
20 our contract programs, our displays and promotions
21 that have been designed in our marketing department
22 to our retail and wholesale community. A retail rep
23 is responsible for executing what the sales rep has
24 in fact sold.

25 Q. And how does the retail rep carry out his or her

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1 duties of -- of augmenting what the sales rep has
2 sold?

3 A. Well they don't -- they don't actually augment
4 it, they -- they execute specifically what the sales
5 rep has said has been sold into that account. So to
6 cite a simple example, if a promotion has been sold
7 by R. J. Reynolds to a store by our sales
8 representative, it may be two or three weeks later
9 that our retail representative comes in and actually
10 sets the promotion up, --

11 Q. Okay. And --

12 A. -- specifically as sold by our sales
13 representative. So --

14 Q. And can you --

15 Can you be a little more specific in terms of
16 what they actually do to execute that on site
17 somewhere?

18 A. Well they -- they would physically --

19 Neither of these groups carries products, so
20 they might bring in a display -- again, a promotion
21 was sold for a certain timeframe. They might bring
22 in the display, take product that is there at the
23 retail account, put it in that display, and place a
24 sign or put pricing on the -- on the display itself.
25 Depends upon the promotion. But it is physically

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1 just execution of the program sold by the sales
2 representative.

3 Q. And going back up the -- the pyramid somewhat to
4 the four regional managers, --

5 A. Yes, sir.

6 Q. -- they have distinct geographic authority and
7 responsibility?

8 A. Yes, sir, they do.

9 Q. Can you tell me who the current four regional
10 managers are?

11 A. In the western sales area, in what -- what we
12 call our Seattle region -- and that actually covers
13 several parts of states, the gentleman's name is Gene
14 Haisch. In what we call the northern California
15 region, which again we call it that simply so we know
16 where it is, it covers several parts of different
17 states, the woman's name is Barbara Simpkins. In the
18 southern California region, and again the geography
19 covers several different areas, the gentleman's name
20 is Roger Farmer. And in what we call the Houston
21 region, the gentleman's name is R. P. Dotson, Roy
22 Dotson.

23 Q. And then on a day-in/day-out basis, the sales
24 reps and retail reps report to those four individuals
25 in the various regions?

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1 A. Well ultimately. But they report through
2 division managers, which are the primary management
3 line within the organization, and the division
4 managers in turn report to the regional managers.

5 Q. Okay. How long have you been in the -- the
6 position of vice-president of sales for the western
7 region?

8 A. Since mid-1995.

9 Q. What was your title immediately before that?

10 A. Immediately before that I was vice-president of
11 account marketing services.

12 Q. What does that position entail in terms of
13 responsibilities?

14 A. I had all of the internal staff support groups
15 that -- that supported sales and marketing.

16 I shouldn't say "all." I had most of the
17 internal staff support groups that supported the
18 operations of sales and marketing. It would include
19 the logistics teams --

20 There were several -- several areas. I'll throw
21 out a few of them that come to mind immediately.
22 Promotion operations, promotion production, sales
23 planning and communication, sales systems. So they
24 were the various operational groups that were
25 involved in executing the programs and strategies

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1 that had been determined by marketing and sales in
2 terms of the programs and strategies we would pursue.

3 Q. And how long were you in that position?

4 A. I came into that position in about mid-1991.

5 Q. And to whom did you report as the marketing
6 services VP?

7 A. To Yancey Ford, who at that time was the
8 executive vice-president of sales.

9 Q. And in that position, how many people reported
10 to you?

11 A. Well, over the course of those three years it
12 varied somewhat, but it ranged anywhere from 90 to
13 140 I would say, approximately.

14 Q. And were those people located all over the
15 country?

16 A. No, sir. They were all located in Winston-Salem
17 in our main office building.

18 Q. Now you mentioned something a moment ago about
19 implementing programs and promotions that were
20 initiated by the marketing group.

21 A. Yes, sir.

22 Q. Can you give me just a little understanding of
23 how sales and marketing are distinct within R. J.
24 Reynolds Tobacco?

25 A. Well as a matter of fact, that was one of the

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1 reasons I came into that position. Sales and -- and
2 marketing --

3 Marketing establishes the strategies for our
4 various brands and is responsible for the developing
5 of the programs that we will implement in the
6 marketplace to support those strategies. Sales has a
7 partial responsibility, when those programs involve
8 sales, to execute those programs. Sales also is
9 responsible, however, for developing the programs to
10 use with our customers. So we have contracts and so
11 forth with our retail customers, we have various
12 agreements with our wholesale customers, and sales is
13 responsible for -- for developing the programs to
14 support those approaches in the marketplace and
15 ultimately for implementing them. So sales has got a
16 distinct set of responsibilities. It also has
17 responsibility to carry out some programs as
18 impacting the marketplace that are developed by
19 marketing.

20 Q. Now with regard to the -- the programs that
21 sales develops on its own with its customers --

22 A. Yes, sir.

23 Q. -- that you mentioned, you -- you said those
24 programs would be with respect to both wholesale and
25 retail --

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1 A. Yes, sir.

2 Q. -- customers?

3 Can you explain to me the difference between a
4 wholesale and a retail customer?

5 A. For the most part we sell our products to
6 wholesale direct accounts who in turn sell those
7 products to retailers, so -- we call on both
8 however.

9 Wholesalers are buying our products. Again, we
10 have the normal kinds of programs any consumer
11 package goods company has. You have the equivalent
12 of something called a slotting allowance. For
13 example, if you're bringing a new brand in,
14 wholesaler has a cost for picking up that new brand,
15 they want to -- they want to have some of that cost
16 deferred, so there are contractual payments, et
17 cetera, associated with that. We're interested in
18 the wholesale side with making sure our products are
19 available to be sold to retail customers, things of
20 that nature.

21 On the retail side, we also call on those retail
22 customers, and we may have display contracts with
23 those individuals where we are paying for displays on
24 the counter. We again are trying to sell very
25 frequently promotion programs that marketing has

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1 developed.

2 So the difference is one is usually a direct
3 customer of ours, the second is -- is actually buying
4 product from our customers, our direct customers, the
5 wholesaler, and is simply being called on so we can
6 seek implementation in those retail accounts.

7 Q. And in the -- in the wholesale accounts, those
8 customers will be the ones who will actually then
9 sell to retail outlets?

10 A. Yes, sir.

11 Q. They --

12 A. There are a few direct accounts that are
13 retailers, but that's the exception rather than the
14 rule.

15 Q. Do they also --

16 In selling to that, do they develop their own
17 method of displays and marketing of RJR Tobacco
18 products?

19 A. No, sir. No, sir. They implement the programs
20 that we bring to them.

21 Q. So when you sell to the wholesalers, you're
22 selling not only product, but you're also selling
23 promotional activities, displays and that sort of
24 thing?

25 A. Yes, sir.

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1 Q. And are those the kinds of programs that can be
2 either implemented -- or I'm sorry -- either
3 developed directly by sales or implemented by sales
4 if they're developed by marketing?

5 A. Well if they're consumer programs, programs
6 intended for the consumer, --

7 Q. Correct.

8 A. -- they are all marketing programs.

9 Q. That was what I was asking about, they are --
10 Programs directed at consumers, those are always
11 going to be marketing developed?

12 A. Yes, sir.

13 Q. So that the kinds of -- of programs that sales
14 develops directly with customers do not involve
15 things like display?

16 A. No, sir. That --

17 All they would involve is how much -- we might
18 determine how much contractually we are willing to
19 pay for a display, but they would not be programs as
20 to what's going to be on that display or anything of
21 that sort.

22 Q. Okay.

23 A. That's all marketing-generated.

24 Q. Now in that position as the vice-president for
25 marketing services, what kinds of -- of job positions

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1 were those 90 to 140 people who reported to you?

2 A. Pretty much, with one or two exceptions which
3 I'll get to in a second, pretty much all of them were
4 operational, executional, taking care of the tactical
5 details.

6 Once a program has been decided upon by
7 marketing, and sales had agreed to work it, it was
8 their responsibility to produce the materials, to
9 handle the -- the logistics, to get things from point
10 A to point B in the timeframe specified. The only
11 real exception to that was -- was the group that was
12 called planning and communications. Their jobs were
13 really operational or executional as well, the
14 difference being that -- that very frequently they'd
15 approach marketing when conflicts exist. You might
16 have two or three groups in marketing all wanting to
17 do something at the same time, and their job was to
18 go back and say we can't handle all of this
19 simultaneously, it's too much of a work load. So
20 they'd work with marketing to -- to schedule out
21 various programs and then were ultimately responsible
22 for communicating the tactical details of those
23 programs to the field.

24 Q. When you talk about the operational types, the
25 majority of those, what kinds of skills did those

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1 individuals have? What -- in their daily job, what
2 kind of skills did they perform?

3 A. Very specific kinds of skill sets. The
4 promotion production group, for example, was a group
5 that -- that is very knowledgeable about the printing
6 process. They might be printing point of sale, and
7 all the requirements associated with -- with the
8 printing of any materials for a tobacco company, the
9 ones ultimately responsible for making sure we had
10 the right warning, the right size warning, et cetera,
11 on the materials, and for getting the materials to
12 print in colors and so forth that were satisfactory
13 to -- to marketing. Marketing ultimately had the
14 approval on that. So -- so in that case it was very
15 premium-specific kinds of skill sets.

16 Promotion operations group, as another example,
17 variously known as either promotion operations or
18 brand promotions operations, had skill sets knowing
19 about the logistics of how long it took us to get
20 things and who we needed to contact in printing in
21 order to assemble the various parts and pieces. A
22 promotion might actually have three to four parts or
23 pieces. Let's say it was a premium item, for
24 example, a premium item being a -- a giveaway
25 promotional material, an ashtray. We'd have to

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1 source the ashtray, we'd have to source the box that
2 the ashtray goes in from yet a separate supplier,
3 we'd have to source any printed material that was
4 going to be placed in the box, and of course then all
5 of that needed to be printed. So their job was to
6 know what was required lead time-wise and make sure
7 all these things came together at the appropriate
8 time to meet the timeframe specified by marketing in
9 order to execute the program.

10 Q. All right. In carrying out those -- those
11 programs, then, these -- these were, as you've
12 described them, true technicians in implementing
13 programs that marketing had developed; correct?

14 A. That's correct, sir. Most all of -- most all of
15 the people in there, while some of them may have had
16 broader skill sets, the jobs that they were in
17 were -- were largely technical jobs.

18 Q. And immediately prior to that position what was
19 your --

20 A. I spent about six months just prior to that in a
21 position called vice-president of the strategic
22 development. And what that job really was -- the
23 title is a little misleading. What that job really
24 was was to figure out why sales and marketing
25 couldn't get a lot of these programs out on time. I

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1 was a department of one at the time, myself and my
2 secretary, and my real job was to figure out how we
3 needed to restructure in order to -- to do a better
4 job in the marketplace getting programs on time to
5 all of our customers. That ultimately led to -- the
6 recommendations I made on that led to my position as
7 head of account marketing services when we brought a
8 number of those different functional support areas
9 together and tried to integrate and unify what we
10 were accomplishing.

11 Q. Prior to -- to that program being implemented
12 during your six-month --

13 A. Uh-huh.

14 Q. -- time period as strategic development
15 vice-president, how had the kinds of operations of
16 the 90 to 140 people you -- you were talking about a
17 moment ago been conducted?

18 A. Well they were conducted in a similar manner.
19 The problem was that they were somewhat disparate;
20 they were spread in different parts of the sales and
21 marketing organizations. So very frequently you had
22 two groups trying to do the same thing, or one group
23 assuming that the other group was doing it and -- and
24 things weren't happening always on a timely manner.
25 And so the idea was, again, to find out what the

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1 problem was; when we identified it, to recommend a
2 new structure to improve our effectiveness and
3 efficiency in delivering things on time. That's
4 really why I was put into that position.

5 Q. All right. Prior to the strategic development
6 position, what was your title?

7 A. I was vice-president of brand management, one of
8 two.

9 Q. And to whom did you report in that position?

10 A. I reported to -- trying to think. At that time
11 Jim -- Jim Schroer.

12 Q. What was his title?

13 A. He was executive vice-president of marketing and
14 sales.

15 Q. And who did you manage, how many people?

16 A. Excuse me, excuse me, I did not. Jim came in
17 right after I moved into the strategic management
18 job. I reported to Peter Holt. I'm sorry.

19 Q. Holt?

20 A. Holt, H-o-l-t.

21 Q. Okay.

22 A. And Peter was -- his title was executive
23 vice-president of marketing. He did not have sales.

24 Q. Peter Holt had marketing?

25 A. Just marketing. Executive vice-president of

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1 marketing.

2 Q. And how many people did you manage?

3 A. I managed half of the brand management group; I
4 would say somewhere in the vicinity of 30 to 35
5 people.

6 Q. And where were those people located?

7 A. They were all located in the marketing
8 department in the Reynolds Building or the Plaza --
9 Plaza Building complex downtown in Winston-Salem.
10 It's all one building.

11 Q. And what were your duties as vice-president of
12 brand management?

13 A. As vice-president of brand management, the
14 brands that I had responsibilities for, I was
15 responsible for assisting in the development of
16 strategies. We had --

17 Reporting to me were brand managers who had
18 specific responsibilities for each of those brands.
19 But my primary responsibilities were for assisting
20 them in the development of the strategies for those
21 various brands, ultimately approving those
22 strategies, determining allocations of dollars
23 between brands.

24 Everybody in business has a fixed pot of money,
25 and which brand got how much was a process that I had

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1 responsibility for, and obviously the development of
2 people who were in those positions.

3 Q. Now when you -- when you talk about the money
4 that was available for each of the brands being
5 allocated, what -- what -- monies for what purpose?

6 A. For purposes of advertising, for purposes of
7 promotions, et cetera, the things that were required
8 to ultimately carry out their plans, objectives, and
9 strategies in the marketplace.

10 Q. Would this be advertising funds for all type of
11 advertising for the brands that you had
12 responsibility for?

13 A. For any advertising that would relate to what we
14 would call the brands equity, what it stands for in
15 the marketplace, print advertising, out-of-home
16 advertising, point-of-sale advertising, those things
17 that were actually physically at retail, yes.

18 Q. What is out-of-home advertising?

19 A. Out of home would be billboard advertising,
20 anything other than what you see on the printed page
21 sitting in your house. We just distinguish it as a
22 broad category. That would be billboards primarily;
23 it might include bus ads or things that you would
24 find out of the home.

25 Q. What about media ads, newspaper?

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1 A. Yes, sir. That's -- that's what I refer to as
2 print advertising, --

3 Q. Okay.

4 A. -- which would be magazines, newspapers.

5 Q. Which brands did you have responsibility for?

6 A. Over the course of that -- the timeframe I was
7 vice-president of advertising -- of brand management,
8 I would have had various responsibilities. Probably
9 most recently I had Winston and our savings brands,
10 which include Doral, Magna. Give me a second. I'm
11 trying to think what other savings brands we had at
12 the time. Monarch. And there may have been one or
13 two other small brands. But over -- over the course
14 of time we rotated the brands and the brand
15 assignments. As I indicated, there were two of us.
16 And so I would have had various responsibility for
17 the different brands over -- over the period I was in
18 that position.

19 Q. Who was the other vice-president for brand
20 management?

21 A. Ed Blackmer.

22 Q. How long were you in that position?

23 A. I was vice-president of advertising brand
24 management from roughly 1988 to 1991, somewhere in
25 that timeframe.

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1 Q. And prior to that what position did you occupy?

2 A. I was a director. And actually there are two
3 different positions as director. For a year I was
4 director of brand management, which is essentially
5 the same responsibilities as -- as we just
6 described. It was just a different title or
7 different title level, but it was the same position,
8 same reporting structure. That was from roughly 1987
9 to 1988. I was also a director prior to that, from,
10 I would guess, about 1985 until 1987, on the Winston
11 brand.

12 Q. Brand specific?

13 A. Yes, sir, on -- on -- just on the Winston brand.

14 Q. And did that director's position for Winston
15 have many of the same responsibilities that you've
16 talked about in the director brand management and the
17 vice-president?

18 A. Well I had specific responsibility for the
19 activities of the Winston brand. And I'd actually
20 occupied that position since 1983. I was a senior
21 brand manager on Winston for a couple of years and
22 then they changed the title to director. So if you
23 looked at the time frames where I basically had the
24 same job, it would have been 1983, inclusive of that
25 time that directorship we just talked about, through

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1 1987, and it was all specific to Winston.

2 Q. And from 1983 to '85, what was the title that
3 you had?

4 A. Senior brand manager, the Winston brand.

5 Q. And the responsibilities for that inclusive
6 period '83 to '87 were roughly the same?

7 A. Roughly the same. The -- the one difference
8 being, obviously, when I had many brands I had
9 allocation decisions to make between the brands; when
10 I just had Winston, my job was to argue why Winston
11 should get more money than another brand. So -- but
12 otherwise the responsibilities were essentially the
13 same. I was ultimately responsible for the
14 development of strategy on the brand and for the
15 development of our consumer programs.

16 Q. Was there at that point somebody that occupied
17 that vice-president-type position that had to make
18 the allocation between all brands?

19 A. Yes, sir, there would have been.

20 Q. So your job as the director or senior brand
21 manager for Winston was to essentially pitch that
22 person for as much of the budget as possible?

23 A. Well for the resources we felt were -- were --
24 were required to do what we wanted to do. And of
25 course any good manager always wants to get as much

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1 money as they can because it allows you to do more.

2 Q. Sure.

3 A. So yes, sir.

4 Q. I understand. And then once you had that
5 allocation made in that Winston management position,
6 what -- what did you do to manage those resources and
7 the people in the department? What --

8 A. Well generally speaking we made that -- that
9 broad-scale pitch annually as we were developing our
10 upcoming year's plans for that. Most of the
11 responsibility after that kind of two- or three-month
12 intense period of planning and so forth, most of your
13 responsibility was coordinating and carrying out,
14 making sure that things got done on a timely basis.
15 If we needed new ads to freshen our advertising pool,
16 it was to direct the agency to -- to go out and
17 conduct a shoot and -- and get those ads.
18 Promotionally, it may be working through all the
19 details of the promotion plans we had.

20 The initial plan may have said we intend to do a
21 consumer premium promotion during the month of April,
22 but we may not have decided what that final promotion
23 would be, so we established a budget for it. Now it
24 was time to go out and actually figure out what we
25 were going to do.

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1 Q. How many people worked under you as the Winston
2 brand manager?

3 A. When I was brand manager back in -- in the early
4 '80s, it was -- probably varied between four and
5 six, four and seven, somewhere in that vicinity.

6 Q. What kind of job positions did they occupy?

7 A. Brand managers -- excuse me. Marketing
8 assistant, which was the entry-level marketing
9 assistant, and assistant brand manager, which was
10 basically the same kinds of responsibilities as a
11 marketing assistant, it was just a more-senior
12 position.

13 Q. Were there outside contract employees or
14 agencies with whom you worked as brand manager?

15 A. Other than the advertising agencies or
16 promotional agency, none that I recall sitting here
17 at this time.

18 Q. So you had responsibility as brand manager to
19 work directly with outside advertising agencies --

20 A. Yes, sir.

21 Q. -- and promotional agencies?

22 A. If we were using promotional agencies. Back in
23 the early '80s we tended not to use those. We tended
24 to get those -- that service through our advertising
25 agency. But we may have periodically hired somebody

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1 on a specific project we didn't feel we were making
2 any progress against.

3 Q. Were there other people that reported to you as
4 the brand manager other than these four to six that
5 you mentioned?

6 A. Not that I recall sitting here.

7 Q. And would those four to six people in
8 conjunction with you have -- and in conjunction with
9 the outside advertising have responsibility to
10 develop all of the materials with respect to -- to
11 Winston for promotion in the -- in the various media
12 that we've talked about here this morning?

13 A. Yes, sir. Have responsibility and, subject to
14 management approval, obviously, final approval
15 authority.

16 Q. Where were --

17 Where were you officed at that time?

18 A. We've always been officed in the Reynolds
19 Building in Winston-Salem. Marketing department has
20 been there since I've been with the company. The
21 floors may have changed a little bit, but it was
22 always in the Reynolds Building.

23 Q. Prior to 1983 what position did you hold?

24 A. I held a position of brand manager.

25 You'll recall in 1983 I became senior brand

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1 manager, so I had similar kinds of responsibilities
2 as a brand manager as I did as the senior brand
3 manager; it was on smaller brands however. At the
4 time it was kind of a position in training for some
5 of our -- our bigger brands, and so I would have had
6 various responsibilities -- roughly 1981 to 1983, it
7 was when I was a brand manager -- various
8 responsibilities for some of our smaller brands,
9 More, Now.

10 Q. And how long were you in that position?

11 A. 1981 to 1983 approximately.

12 Q. As the senior brand manager for Winston, did you
13 have occasion to interact with other senior brand
14 managers?

15 A. Certainly. We were all in the same building.

16 Q. And would each of the -- of the brands have a
17 person with the same responsibilities assigned, a
18 senior brand manager or a brand manager?

19 A. Yes. Each brand was headed by a manager either
20 titled brand manager or senior brand manager, usually
21 depending upon the size of the brand.

22 Q. In terms of what I -- what I referred to,
23 interaction between the other brand managers, in
24 terms of the kinds of --

25 Did you have formalized meetings as a brand

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1 management committee, anything like that?

2 A. I -- I'm --

3 Not as a committee, not to pass judgment on one
4 another's work or something like that. I'm sure we
5 had brand management meetings where the managers were
6 brought in. Usually those kinds of meetings were
7 operational in -- in nature; they were sitting down
8 and telling us about how we were going to deal with
9 personnel policy or something along that line this
10 upcoming year. It's a relative -- relatively small
11 group of people co-located on a floor. There is a
12 lot of ongoing interaction. And as I'd indicated a
13 moment ago, because we switched around brands quite
14 frequently, we very frequently talked about each
15 other's brands and shared ideas and -- and talked
16 about -- about what some of the issues were we were
17 wrestling with and what some of the best marketing
18 approaches might be for those.

19 Q. Was --

20 A. Casual conversations.

21 Q. Was there any sense of competitiveness between
22 the brands within RJR Tobacco such that things that
23 you were doing were kept secret from -- in any way?

24 A. Absolutely not, no. There's always a
25 competitiveness when you've got people trying to move

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1 and be successful in an organization, but it -- it
2 has always been very amenable competitiveness,
3 friendly competitiveness within -- within that
4 organization, and nothing of the ilk that anything
5 was kept from anybody.

6 Q. So documents and information with respect to
7 promotions of Winston would have been freely
8 available to people who were brand managers of -- of
9 Camel.

10 A. Yes, sir. Now they --

11 We might not have gone out of our way to send
12 them one because it wouldn't relate to their
13 business, but there would be no reason they would be
14 unaware of it. And they'd find out. Even if you
15 wanted it to be, they'd find out through some of the
16 support groups that might be executing it anyway.

17 You might have the same people working on the brand.

18 So it's a very small group -- relatively small
19 group of people, at least at that point.

20 Q. Prior to 1981, what position did you occupy with
21 the company?

22 A. From 1979 to 1981 I was an assistant brand
23 manager. And from 1977, when I joined the company,
24 to 1979, I was a marketing assistant. Those two
25 positions essentially held the same accountabilities;

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1 they were to assist the brand manager responsible for
2 a specific brand in the various program developments
3 and so forth that were taking place in the brand, and
4 their difference is only one of title and time and
5 place.

6 Q. And from '79 to '81 as the assistant brand
7 manager, did you work on more -- did you work with
8 more than one brand manager?

9 A. Yes, sir, I worked with more than one brand
10 manager and I worked on more than one brand.

11 Q. At -- at the same time?

12 A. No, no, no. No. It was always --

13 You were specifically working on one given
14 brand. A brand group was always focused just against
15 the responsibilities of that brand at that time.

16 Q. And between that period of '77 --

17 As a marketing assistant -- assistant, that
18 would also have been with respect to a brand at a
19 time?

20 A. Yes, sir.

21 Q. Between '77 and '81 as marketing assistant or
22 assistant brand manager, did you work on virtually
23 all of the brands that were RJR Tobacco brands at
24 that time?

25 A. Sitting here, I would say yes. I may have

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1 missed a brand or two, but I -- my -- my recollection
2 would be, yes, I -- I -- again you moved --

3 They may have moved us as assistants anywhere
4 from once every six months to once every year, so
5 probability would be very good. And the reason I'm
6 having difficulty with the recollection is if you
7 look at that career up until the time that I moved in
8 to -- in to sales, I've worked on all the brands over
9 the course of the years in marketing. So --

10 MR. FINZEN: Can I see the exhibits.

11 (Exhibits handed to Mr. Finzen.)

12 Q. Mr. Sanders, I'm showing you what's been marked
13 as Exhibit 46, I believe -- yes -- and I ask you to
14 tell me whether you've ever seen that before?

15 A. Yes, sir, I have.

16 Q. When is the first time that you saw that
17 document?

18 A. The first time that I've seen this specific
19 document was when I was shown it by our attorneys
20 relative to this deposition.

21 Q. When was that?

22 A. Probably about four weeks ago.

23 Q. And who showed you the document?

24 A. If you don't mind, I've written down the names
25 of the various attorneys because I otherwise won't

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1 remember them, or their law firms for sure.

2 Q. Sure.

3 A. At the time -- I think my recollection is
4 correct on this -- I believe I was meeting with
5 Jonathan Redgrave from Gray Plant Mooty, Mike Leonard
6 from Womble Carlyle, and Tim Opsitnick from Jones
7 Day.

8 Q. And where did that meeting take place?

9 A. In my office.

10 Q. And where is your current office located?

11 A. In the Reynolds Building.

12 Q. Now when they came to see you with this notice,
13 did they actually show you the notice at that time?

14 A. Sir, I don't recall if I actually saw the
15 physical notice at the time.

16 Q. Did they indicate to you what the purpose was
17 of -- of seeing you at that time?

18 MR. JONES: That only calls for a "yes" or
19 "no" answer.

20 A. Could you repeat the question? I'm sorry.

21 Q. Sure.

22 Did they indicate to you what the purpose was
23 for coming to see you at that time?

24 A. Yes.

25 Q. And did they tell you that the purpose was to

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1 determine whether you would be willing to testify
2 pursuant to this notice?

3 MR. JONES: I would have to instruct you
4 not to answer on that because that would -- that
5 would be attorney-client privilege.

6 Q. Let me ask -- let me ask this then: Did any --
7 anyone inside R. J. Reynolds Tobacco talk to you
8 about testifying here today?

9 A. The only people I've ever spoken with on this
10 are our attorneys.

11 Q. You've not spoken with anyone in the upper
12 management levels to whom you report?

13 A. No, sir.

14 Q. No one in a higher management level came to you
15 and asked you whether you would be willing to testify
16 today?

17 A. No, sir.

18 Q. If you take a look at the second page of Exhibit
19 46 and the full paragraph on that page, it says that
20 pursuant to Rule 30.02(f), R. J. Reynolds shall
21 designate one or more representatives who shall be
22 qualified to testify as to matters known or
23 reasonably available to R. J. Reynolds concerning the
24 collection and production of documents produced in
25 the above-captioned litigation. Do you see that?

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1 A. Yes, sir.

2 Q. Are you qualified to testify concerning the
3 collection and production of documents in the
4 Minnesota -- State of Minnesota, Blue Cross Blue
5 Shield litigation?

6 A. I believe I am, sir, on -- on a couple of
7 bases: Number one, I have been with the company in
8 marketing and sales positions since 1977, I'm
9 probably one of the most tenured if not the most
10 tenured person in the department in terms of the
11 number of years I've been associated with that; I'm
12 also eminently familiar from my perspective with --
13 with how documents are collected at Reynolds. I have
14 been part of that process virtually since the time I
15 joined the company.

16 Q. Have you had responsibility in any of the
17 positions we've gone over this morning for management
18 of collection of documents for litigation involving
19 smoking and health that has been conducted against
20 RJR Tobacco?

21 A. What I have had responsibility for is complying
22 with the company's position and the -- and the
23 company's standing rules regarding which -- which
24 documents we are to retain and which documents we are
25 to keep on file. I've not had specific

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1 accountability other than complying with the
2 company's policy on that for -- for managing those
3 documents.

4 Q. Are there people within the sales and marketing
5 area of the company who have had responsibility for
6 supervising the collection of documents for
7 production in litigation involving smoking and health
8 issues?

9 A. Within sales and marketing?

10 Q. Yes.

11 A. Let me -- I'm -- make sure I understand your
12 question. What we have had responsibility for is
13 department heads have been responsible for making
14 sure everybody is very clear on what our policies are
15 in the company and making sure people comply. Now
16 they have not had responsibility for physically
17 collecting those documents or -- or tracking them
18 themselves, no.

19 Q. Who are the department heads that have had that
20 responsibility that you talked about for making sure
21 that people are clear on policies?

22 A. Well in the case --

23 Of course the organization changes over the
24 time. As vice-president of advertising and brand --
25 brand management or brand management, I would have

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1 had responsibility along with my counterpart to make
2 sure our employees are clear on it. In fact those
3 employees have all received -- we have a
4 long-standing policy on this -- have all been
5 receiving notices regarding that from executive
6 management, and again reinforced by department heads,
7 as to what those policies are.

8 Q. So when you refer to "department heads," you're
9 referring to a whole series of people who would have
10 responsibilities within departments located around
11 sales and marketing that would have had that
12 responsibility for the people they manage?

13 A. That's correct, sir.

14 Q. Is there anyone that had a more across-lines
15 responsibility for that for multiple departments
16 within sales and marketing? And by that I mean
17 responsibility for overseeing the implementation of
18 policy for collection and preservation of documents
19 related to litigation concerning smoking and health
20 issues.

21 A. Well policy -- company policy is company policy,
22 and this one -- and a violation of company policy can
23 result in a very severe reprimand, up to and
24 including loss of your job. So any company policy,
25 including this one, is one that is reinforced at

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1 least annually by a senior member of the organization
2 and is reinforced by all department heads on an
3 ongoing basis.

4 Q. And this reinforcement that you're talking
5 about, did that ever take the form of written memos
6 and instructions from the supervisors or managers to
7 the people that they managed on the issues of
8 document collection and retention?

9 A. Most commonly, sir, it would be -- right --
10 annually -- let me step back for a second.

11 Since the early '80s, '83 or '84, we have had
12 regular annual reinforcements of company policy
13 coming out in documentation to a department head.
14 Most commonly department heads would forward that
15 information directly on to their direct reports,
16 usually a hard copy of that, of that memo, and
17 probably discuss it in a staff or status meeting as
18 we would with any other company policies, policies
19 regarding, you know, the receipt of goods or gifts
20 from outside of the corporation, et cetera.

21 Q. When you looked at the notice, which is
22 Plaintiffs' Exhibit 46, did you believe that there
23 was anyone else within the company who was as
24 qualified as you to speak to the collection and
25 production of documents, at least in the marketing

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1 and sales area?

2 A. As qualified?

3 I don't believe so. I believe I am probably the
4 most qualified individual, again based on tenure and
5 time in position as well as exposure to -- to the
6 process that the company has as policy for the
7 collection of documents.

8 Q. Now you mentioned a few moments ago that almost
9 since the beginning of your time with the company
10 you've been involved in issues related to document
11 production for tobacco-related litigation; is that
12 correct?

13 A. Yes, sir.

14 Q. What's the earliest time that you can recall
15 that there was a request made for collection of any
16 documents of yours, your own documents for
17 tobacco-related litigation?

18 A. It was shortly after I arrived at the company,
19 sometime in mid to, let's say, late second quarter,
20 early third quarter of 1977.

21 I don't recall the specifics of what prompted it
22 at the time; it may have been something to do with --
23 with the FTC -- with an FTC case that was going on,
24 the specifics of which I don't recall. But our
25 normal document-retention policies, which any

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1 corporation has, were suspended in marketing at that
2 time, and the reason was because of -- of us wanting
3 to make sure that we were able to provide
4 documentation of our activities. That altered in
5 1984 and became an even more formal -- '83, '84 --
6 and became an even more formalized process.

7 Q. Were there other such requests that you saw that
8 were either case-specific or more general requests
9 for production of any documents of yours between 1977
10 and 1984?

11 A. Could you ask the question one more time,
12 please? I'm not sure I understand it.

13 Q. Sure.

14 You mentioned you recall right after coming to
15 the company in --

16 A. Uh-huh.

17 Q. -- the second or third quarter of 1977 there
18 being a request that may have been related to an
19 FTC-related --

20 A. Yes, sir.

21 Q. -- piece of litigation. I think you said
22 that --

23 MR. FINZEN: Can we go off the record?

24 THE REPORTER: Off the record, please.

25 (Discussion off the record.)

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1 BY MR. FINZEN:

2 Q. Mr. Sanders, before we took the break, I was --
3 you had asked me to reformulate my last question, and
4 what I was trying to ask you is: You had mentioned
5 that when you came in the late second quarter or
6 third quarter of 1977, there was a document request
7 you recall being related potentially to some FTC
8 litigation, and then you said that the program of
9 collection of documents was altered in 1984 and
10 became more formalized. The question I was trying to
11 ask was: Do you recall any other instances between
12 1977 and that period of time in 1984 when the program
13 became more formalized when there were other
14 less-formal, more-case-specific requests for
15 production of any of your documents?

16 A. I don't recall any case-specific, but I do know
17 from '77 on the document retention really became --
18 started to become part of the culture in -- in the
19 marketing department, and that was pretty much
20 reinforced annually.

21 Q. From 1977 to 1984 was there in place in the
22 marketing department any kind of a document-retention
23 policy?

24 A. Other than what we were talking about right now
25 in terms of -- of asking us to save all documents?

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1 Q. Either that, or a policy that permitted
2 documents to be routinely either stored or destroyed
3 after a certain period of time.

4 A. I don't recall prior to that. Again, I started
5 in '77, and we pretty much always kept the marketing
6 department's. So --

7 Q. From the time you started in '77, was there in
8 place within the marketing department a procedure
9 where documents would be stored on a routine basis
10 outside of the work area of the people within the
11 marketing department itself?

12 A. Yes, sir.

13 Q. And how did that program work? What was the
14 period of time in which materials could be stored as
15 opposed to being kept?

16 A. Well, when files were no longer being used, they
17 were sent to our document-retention center. There --
18 that document-retention center exists or the records
19 center exists in Winston-Salem, where exactly I don't
20 know.

21 Q. Was there any policy in place from 1977 to 1984,
22 in that time period, that permitted documents to be
23 destroyed as opposed to sent to the records center?

24 A. I don't remember what the specific policies
25 were. If there were operational documents --

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1 "operational documents" mean simply, again, dealing
2 with the logistics of how to get things from this
3 point to that point -- I'm sure there was some kind
4 of -- of retention schedule. I wasn't involved with
5 many of those kinds of documents working in brand
6 management at the time. There may have been other
7 groups within marketing that would have been involved
8 with those, and -- and I would assume there was
9 probably -- those would be non-sensitive documents or
10 of concern to anybody. But I can't tell you
11 specifically, I just don't recall.

12 Q. You don't recall ever seeing a written policy
13 that dealt with the issue of when documents could be
14 destroyed as opposed to sent to the records center
15 when they were no longer active files?

16 A. Sitting here, I don't recall.

17 Q. What did you do to prepare for your deposition
18 here today?

19 A. Virtually all I did was spend some time talking
20 with the attorneys, them asking me some questions.

21 Q. And with whom did you meet?

22 A. Again, as I said earlier, the first -- first
23 time I ever had a meeting was with Jonathan Redgrave
24 of Gray Plant Moore, I believe, and with Jeff, who'd
25 come by my office, didn't really indicate a heck of a

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1 lot about why, but simply asked some questions.

2 Q. And did you have subsequent meetings then?

3 A. Yes. As I believe I told you earlier, three or
4 four weeks ago I met with Tim Opsitnick with Jones
5 Day, with Jonathan Redgrave, and with Mike Leonard
6 with Womble Carlyle.

7 Q. And how many times did you meet with those
8 individuals?

9 A. Met with that -- that group of individuals --
10 individuals once.

11 Q. Did you have other meetings with other groups of
12 lawyers?

13 A. No, sir. The only other meeting I had was
14 yesterday just prior to coming down.

15 Q. And in total time, how much time did you spend
16 meeting in preparation for the deposition today?

17 A. Maybe four to six hours, somewhere in that
18 vicinity.

19 Q. Did you review any documents in preparation for
20 the deposition?

21 A. Prior to --

22 That I recall, prior to yesterday, no.

23 Yesterday we did review some documents.

24 Q. Do you recall what documents those were?

25 A. They showed me some organizational chart

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1 documents. Again, didn't really spend time -- any
2 time studying them. We reviewed the -- and I don't
3 know the legal terms for some of these things, but
4 they showed me, I believe, the -- the document-
5 retention order from the Castano case and -- and
6 subsequently what's going on in the Minnesota case.

7 I believe it was Castano case, but again, I'm
8 not -- this is not my area of expertise.

9 Q. Sure.

10 A. I understood what was in them clearly. And
11 again, a document -- other than this Plaintiffs'
12 Exhibit No. 46, I think I saw that, I -- I can't
13 recall if it was yesterday that I saw that or in the
14 prior meeting -- but it was basically those were
15 the -- the documents that I'd seen.

16 Q. Now in 1984, when you mentioned that the program
17 of document production for litigation related to
18 tobacco issues became more formalized, what do you
19 recall about that happening that -- that you felt
20 made it a more-formalized process?

21 A. Well beginning in -- and again, in '83, '84, I
22 couldn't tell you exactly what the date was, but what
23 was -- what was very much different in that was
24 the -- at that time people were coming by our offices
25 or started coming by our offices and physically

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1 picking up all of our documents, taking them to
2 another location, screening through them. When I
3 received my documents back, they had a pink form laid
4 in front of them, meaning that everything behind the
5 pink form had been reviewed, and I was instructed to,
6 any new documents placed in those files, to place
7 them in front of the pink form, any documents that I
8 pulled out from behind the pink form and made
9 additional notations on, to place them in front so
10 that they could be reviewed again. And many of the
11 documents came back with a small number of notations
12 on them, which I assume was some kind of cataloging
13 or -- or documentation system that had been put in
14 place.

15 Q. What kinds of files did you maintain in that
16 timeframe that you're talking about being reviewed?

17 A. They would be any and all -- any and all files
18 related to the activities I was engaged in at the
19 time.

20 Q. And -- and I'm asking now in that timeframe,
21 what kinds of files would they have been?

22 MR. JONES: In the '83, '84 timeframe.

23 MR. FINZEN: Right.

24 A. Okay. So let me think what I was doing at the
25 time. I would have been senior brand manager on

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1 Winston. Pretty much anything related to any
2 strategy on Winston or any major programs that we
3 were developing on Winston would have been kept in
4 my -- my files.

5 Q. Memos?

6 A. Yes, sir.

7 Q. Correspondence?

8 A. Yes, sir.

9 Q. Brand-promotion plans?

10 A. Yes, sir. Virtually anything related to the
11 brand that I had responsibility for would have been
12 kept in -- in our filing system.

13 Q. Including proposals for advertising campaigns
14 from outside agencies?

15 A. If an agency were to make a specific
16 recommendation to us on a strategy, that would have
17 been kept within my files, yes.

18 Q. And would that have been kept within your files
19 whether or not that particular promotion or campaign
20 was actually implemented?

21 A. If I received it, yes, it would.

22 Q. With regard to how that production of -- of
23 files actually occurred, and again we're in the '84
24 timeframe, --

25 A. Uh-huh.

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1 Q. -- what do you recall by -- by way of the
2 procedure for the search and review of your files,
3 how was that carried out?

4 A. Well, first off, we were notified of the fact
5 that it was a company policy that they were moving to
6 a new process and that the big change would be the --
7 the law department would be coming down to our office
8 and -- and taking our files. At that time they came
9 down literally whenever they -- they so choose.
10 There was no advance notice or anything else
11 provided. They simply came down and took the files
12 one day, promised to get them back as soon as they
13 had a chance to review them. And they were sensitive
14 to the fact that -- that we may be engaged right in
15 the middle of a business project, so they wanted to
16 get the files back. And -- and everybody understood
17 very clearly that that was fine; they were to take
18 what they got in the drawers or the -- or wherever we
19 filed our materials. They would ask us if we had any
20 other files other than those that they had taken, and
21 if we did, we told them where they were. And what
22 exactly they did in their own review process with
23 that, I don't know. I do know how it impacted us as
24 employees again, as I described earlier, when those
25 materials came back.

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1 Q. Now was there any discretion on the -- on your
2 part as to which files they took and which files they
3 didn't take?

4 A. No, sir.

5 Q. And would they come into your office and take
6 all of the files at one time from your office?

7 A. For the most part, yes. There -- there might be
8 two -- two exceptions that I can think of right off
9 the top of my head. One is if you had a working
10 file; in other words, in this --

11 Let me give you a simple example from today.
12 I'm going to see a customer next Tuesday. I need
13 that customer file to have it with me. But I would
14 tell them that so that when they brought my files
15 back, they'd know they have to get this customer file
16 back for me, say, next week and deal with it. So if
17 you had a working file that you were engaged in a
18 project on, that might be exempted until they
19 returned, but it was captured at that time.

20 The other thing is if you had any personal files
21 or something of that sort, variously you generally
22 would tell them, "These are nothing but a stockbroker
23 statement I have." Back at that time sometimes they
24 even looked real quickly and said, "Yes, there's
25 nothing in there that is related to anything other

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1 than you and your personal business." But other than
2 that, it was -- it was pretty comprehensive,
3 including any manuals that might exist in the office
4 even though you knew those manuals existed elsewhere.
5 Q. And when you had a -- a personal file like that,
6 you say at that time they might -- they might look at
7 it, was there ever a time when they would take those
8 personal files as well and make a decision about
9 whether or not they contained anything that was
10 perhaps called for in the particular document
11 production they were engaged in at that time?
12 A. Well I -- I can't speak for who even keeps
13 personal files in the office. In my case I can -- I
14 could give you an example of one time when they came
15 and I wasn't there, they just took all the files in
16 the drawer, and that included a couple of personal
17 files. So other times when they've come and I said,
18 "Well these two things over here are related to the
19 house I'm building" or whatever -- and when I mean
20 personal, I literally mean related to my personal
21 finances or -- or something of that sort -- and on
22 adjust a cursory glance they'd say, "Those are fine,
23 we won't take those." But if it wasn't specified, we
24 didn't talk about it, they took it all.
25 Q. Did you maintain -- and again I'm talking about

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1 the 1984 timeframe -- computer files?

2 A. 1984. I don't even believe we had computers.

3 I'm not even sure, sir, that we had word processors
4 at that time.

5 Q. Were there any materials that were used in your
6 operation as brand manager at that time that were
7 maintained anywhere other than in the Reynolds
8 Building complex where you were officed?

9 A. The first part of that sentence again. I just
10 want to make sure what your question is.

11 Q. Sure.

12 I'm asking about that same timeframe in 1984,
13 whether or not you had materials that you used in the
14 brand management job that you had at that time that
15 were maintained in any location other than in the
16 Reynolds Building where your offices were.

17 A. Nothing that would be used that I can think of,
18 no, sir.

19 Q. And from 1984 onward did the process that we've
20 talked about here, since it became more formalized in
21 '84, change in any way?

22 A. Not in any substantive way that I can think. It
23 is -- it's an ingrained part of our culture. I mean
24 this is --

25 The company's position on this is real clear:

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1 it wants the documents retained. It expects as part
2 of company policy that employees will comply with
3 that. And it's a pretty comprehensive approach.

4 I don't recall anything substantive to be
5 changing, with one exception, and that is on a
6 personal basis since I became an officer of the
7 company or an executive of the company, they're a
8 little bit sensitive, obviously, to my schedules and
9 they try and come in and take my files at a time when
10 it's convenient for me. They try and be sensitive to
11 the fact I might be in a meeting or something, so
12 they'll try to come in when I'm out of town or -- or
13 away in a meeting for two or three hours as opposed
14 to coming in when I might be having a meeting in my
15 office. But that's the only sensitivity change I
16 have seen. It's been a real consistent process, it's
17 been very comprehensive, and everybody is fully
18 expected by the company to comply with it.

19 Q. And that program that became more formalized in
20 1984 continues to the present?

21 A. Yes, sir.

22 Q. Between 1984 and 19 -- January of 1995, are you
23 aware of -- of any documents that were within the
24 sales and marketing area where you worked that
25 were -- were destroyed for any reason?

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1 A. No, sir.

2 Q. And during that period of time it would be your
3 testimony that the documents either were retained in
4 your files, or, if they became a non-working file,
5 went to the -- to the document-storage facilities of
6 RJR Tobacco?

7 A. Sitting here, as I'm sitting here recalling
8 everything I can think of in the past, that's normal
9 operating procedure, and I don't recall varying from
10 that.

11 Q. At some point in time did the sales and
12 marketing group start to have computer documents,
13 files that were kept on computer?

14 A. Yes, sir.

15 Q. Do you know when approximately that began?

16 A. Well it phased in. First, probably, secretaries
17 received word-processing capability. I -- I cannot
18 tell you what the timeframe would be for that. And
19 my guess would be in terms of computers showing up on
20 marketing assnstants' desks and brand managers'
21 desks, it was probably the late '80s, '87, '88. But
22 I -- I really don't recall in specific terms.

23 I think the first computer showed up on my desk
24 when I was vice-president of brand management, which
25 would have put it in the late '80s. So --

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1 Q. Do you know what the practice was, then, with
2 regard to these periodic reviews of documents that
3 you testified about this morning, when there were
4 computer records or work in process that was on
5 computers, how was that accomplished?

6 A. Yes, sir. If -- if a hard copy of -- of any
7 documentation that existed in any of the computers
8 did not exist in the file, and frequently a hard copy
9 was kept in a correspondence file or in a specific
10 place, a copy -- generally we were -- we were asked
11 or our secretaries were asked if there was anything
12 on their hard drives or any diskettes that they had
13 that did not have -- were not in the file in hard
14 copy, if there were, they made copies of them and
15 they took those along with the documents.

16 Q. Made hard copies of them?

17 A. Made hard copies of them, yes, sir.

18 Q. Do you recall at any time that they would either
19 take diskettes or download hard-drive materials on to
20 diskettes and take those with them at the same time
21 they took copies of the paper files?

22 A. I don't recall that ever happening in my case.
23 If I had something on -- on hard drive, I was happy
24 to print off a copy of it. I would assume that
25 happened with the secretaries as well. I know the

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1 question was asked of everybody, but how they then
2 physically took it, if they took it in electronic
3 form or if they took it in hard-copy form, I don't
4 know. I know they took it.

5 Q. Now we talked a little bit earlier about the --
6 the fact that in many of the positions that you've
7 had, you've worked closely with outside advertising
8 or public-relation agencies in developing and
9 implementing marketing and sales promotions for
10 brands of RJR Tobacco products; correct?

11 MR. JONES: Note my objection. Go ahead.

12 THE WITNESS: I'm sorry?

13 MR. JONES: Note my objection. Go ahead.

14 I'm --

15 MR. FINZEN: From time to time --

16 MR. JONES: I'm not sure --

17 THE WITNESS: Okay.

18 MR. FINZEN: -- there may be objections
19 made just for the record, but you -- unless you're
20 instructed by your counsel not to answer, you can go
21 ahead and answer the question.

22 THE WITNESS: All right.

23 A. Actually I --

24 Just as a correction. I don't think I said
25 anything about public-relations agencies. We worked

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1 with promotion agencies --

2 Q. Okay.

3 A. -- and advertising agencies periodically over
4 time, yes.

5 Q. All right. I -- I stand corrected. And that's
6 what I really meant to --

7 A. Well I didn't think you were trying to get me to
8 say something.

9 Q. What I really meant to say was the advertising
10 and promotion agencies.

11 A. Yes, sir.

12 Q. When there would be these reviews of documents
13 by the legal department that you've talked about this
14 morning, do you know whether or not, if you were on
15 a -- an active campaign at that time with a promotion
16 agency or an advertising agency, the attorneys went
17 to those agencies and went through their files to
18 obtain documents?

19 A. I don't know for sure whether they did or
20 didn't, but I would -- I would tell you if there was
21 anything substantive submitted to Reynolds, to me,
22 for example, as a brand manager or senior brand
23 manager on a brand, regardless of my position, as a
24 recommendation from an agency, I would have kept that
25 within my files and it would have been captured as

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1 part of a process when they came through and -- and
2 got my files.

3 Q. Tell me about how the work with advertising
4 agencies occurs. Did they generally come to
5 Winston-Salem and work in your facility, or do you
6 sometimes go to the -- the town or the office where
7 they're located and work in their facilities?

8 A. Well I -- I can't speak to exactly how it works
9 today. I can speak from my experience when I was
10 involved in that end of the business, and the answer
11 to your question is "both."

12 Q. In the process of working with agencies in their
13 locations, from time to time would there be materials
14 for a program that was being developed that would
15 have been only existent at their offices where you
16 would not have had copies of those materials?

17 MR. JONES: Note my objection to the extent
18 it calls for speculation.

19 A. I'm trying to sit here and thinking of
20 examples. Normally an agency would present materials
21 to us even. If that was advertising materials, we
22 basically paid for that, and that became our
23 property. So whether we used it or not, it was our
24 property. The same would certainly be true of any
25 documentation. If they made a presentation, they'd

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1 give us a hard copy. So I -- I don't know if there
2 would be anything beyond that. I -- I can't think of
3 anything sitting here.

4 Q. What about with regard to the work with -- with
5 promotion companies, how would that work differ from
6 work with an advertising agency?

7 A. Generally speaking it would be on -- on more
8 narrow, specific projects or assignments as -- as
9 opposed to an advertising agency might be involved
10 in -- in helping define marketing strategy.

11 The other major difference would be promotional
12 agencies pretty much always came to Reynolds, we
13 wouldn't go out and -- and visit them. Very
14 frequently promotional agencies are small; they don't
15 have big offices and so forth. They came to us.

16 Q. And what would be the difference in the kind of
17 work that a promotional agency would do for RJR
18 Tobacco as opposed to an advertising agency?

19 A. Very --

20 Promotional agencies as a general rule would do
21 very narrow-scoped work. They might -- we might be
22 seeking assistance in helping us find a premium item
23 that -- that both franchise adult smokers and
24 competitive adult smokers might be interested in.
25 We'd define some broad parameters, perhaps, of what

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1 we were looking for, and their job would be to go out
2 and kind of source it, come back to us with some
3 ideas. Premium item again being ashtrays or whatever
4 the case might be with the purchase of cigarettes.

5 Q. And would the work with both of the agencies and
6 the promotion companies result in either campaign
7 materials or reports about the project being
8 presented to RJR Tobacco employees from those
9 companies?

10 A. If by "campaign materials" you mean like
11 advertising, certainly they would make those kinds
12 of -- those kinds of presentations. When it came to
13 other materials, they may occasionally make a
14 presentation, but they didn't do outside research and
15 things. We've had -- we have our own groups within
16 the marketing organization that dealt with that, so
17 more often they would sit through as that research is
18 being presented. They -- they tended to -- to
19 provide end-level work, advertising or specific
20 promotional recommendations; occasionally were
21 engaged in strategic issues. But we would, again,
22 receive copies of all of those.

23 Q. Would either the advertising agencies or the
24 promotion agencies you worked with provide any kinds
25 of marketing reports with regard to market share of

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1 brand?

2 A. I don't recall specifically. If they did ever,
3 it was probably our own market-share numbers, for
4 example, that we had shared with them, and it was
5 probably just to give a context for a specific
6 recommendation that they were doing. We had the
7 information sources or the databases, and they would
8 use those, perhaps, to talk about a position they
9 might take. But --

10 Q. With regard to market reports and market-share
11 reports, would all of that data be generated in-house
12 at RJR Tobacco?

13 A. Well a word like "all" makes me a little
14 nervous. As I'm sitting here, I can't think of
15 anything that would have been generated outside of
16 the company. There may be some, but most everything
17 we did was -- was generated and tracked within the
18 company.

19 Q. And I guess the -- maybe the better question
20 would be: Do you recall working with any outside
21 companies, either advertising agencies, promotion
22 companies or public-relation companies, where their
23 assignment was to obtain market-share data for RJR
24 Tobacco for any RJR brand?

25 THE REPORTER: Just a moment. We have to

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1 go off the record.

2 (Discussion off the record.)

3 (Record read by the court reporter.)

4 A. As I sit here today, no, I do not. I can't
5 recall any.

6 Q. Now you said that generally that information was
7 generated in -- in-house through your own market
8 tracking facilities; correct?

9 A. Yes, through our marketing research group.

10 Q. What kinds of information sources or databases
11 did the market research group use and maintain on a
12 regular basis?

13 A. Obviously they -- they tracked our market share
14 via one of two different kinds of sources: one is
15 something I refer to as MSA data, which is nothing
16 more than manufacturers' shipments data. It's data
17 that the companies have to report to the government
18 to pay federal excise taxes, and that gives us a feel
19 for what our shipments are versus competition
20 shipments. I don't know the exact frequency with
21 which that's reported, whether it's daily, which I
22 believe it is, or I -- we probably summarized it on a
23 weekly basis. But it's just a raw database of how
24 much product we sold and therefore will pay excise
25 tax on. There has always been a form or another

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1 of -- of consumer-share data tracked. That might be
2 Nielsen data or what we call Marlin data today, which
3 is a -- again, it's just a share representation of --
4 of consumer takeaway at -- at retail. And other than
5 that, I -- as I'm sitting here, I don't recall any
6 other data sources.

7 Now they -- they did keep -- obviously they kept
8 their own records. Marketing research reports were
9 the one thing that -- that a year after they'd been
10 generated might still have some real value in the
11 marketing department, and -- and I know the Business
12 Information Center, the research library kept track
13 of those kinds of things. I don't know if you call
14 that a database or what you call that, but -- but it
15 was a library facility for those kinds of reports.

16 Sitting here right now, that's all that's coming
17 to mind.

18 Q. Now you just mentioned a term "Business
19 Information Center." Is that a facility within sales
20 and marketing?

21 A. I believe it's always reported to the marketing
22 research group, which has been in -- as part of the
23 marketing department, yes.

24 Q. And do you know where that facility or center is
25 located?

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1 A. It's in the Reynolds Building. Same building
2 that marketing and sales are in.

3 Q. The MSA data that you referred to, is that a
4 computerized database?

5 A. Sir, I would assume so. I -- I don't know.
6 The -- the database is --

7 It's just a numbers database. I don't know if
8 it's sent electronically to them or if we simply
9 encapsulate it electronically, but it probably -- it
10 probably is. I'm just not sure.

11 Q. Do you know what part of RJR Tobacco maintains
12 that database?

13 A. I would guess that that's done within the
14 marketing -- marketing research group. Who
15 specifically, I don't know.

16 Q. And is the marketing research group part of the
17 sales marketing organization?

18 A. Yes, sir, it always has been. Since I've been
19 at the company it has been part of the marketing
20 organization.

21 Q. And the consumer-share data that you talked
22 about, is that a -- a computer database?

23 A. I don't know for sure. I would assume it is.
24 It is a raw-number database again. But I don't know
25 for sure. I would assume it is.

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1 Q. And by whom is that maintained?

2 A. Same people that would maintain the MSA share
3 data, at least to my knowledge. That would be
4 logical.

5 Q. The market research group within the sales and
6 marketing, are they different from the personnel that
7 would control the Business Information Center?

8 A. Sitting here, as long as I can remember they've
9 always -- the Business Information Center has always
10 reported through to someone in the marketing research
11 group. That may have changed. Who that was going to
12 be or what -- what -- where the department was may
13 have changed over time, but as I can sit here and
14 remember, it's always been within that -- within that
15 group.

16 Q. So if I understand, Business Information Center
17 is reporting to the market research group or part of
18 the market research group?

19 A. I'm not sure I see the distinction in your
20 question.

21 Q. Well I guess what I'm -- I'm just trying to find
22 out whether it is a separate, free-standing group
23 within sales and marketing that has a reporting
24 function to market research, or whether it is
25 actually part of the market research group itself.

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1 A. I don't know as I can answer that question. I'm
2 not sure --

3 If I had today's organizational chart, I could
4 tell you how it's being dealt with today, but I -- I
5 just don't know for sure. And I'm not sure I'm clear
6 on the distinction you're drawing yet in my own mind.

7 Q. The distinction I'm trying to draw is one of a
8 reporting function from a distinct group to another
9 distinct group as part -- as opposed to being part of
10 one group on an organizational-chart kind of basis.

11 A. Okay.

12 Q. Does that help?

13 A. It -- it doesn't because I -- I don't see any
14 difference in the two of those things the way we
15 operate. But --

16 Q. Can we look at Exhibit 48, please.

17 A. Sorry, but I'm really having difficulty
18 understanding the nature of it.

19 (Exhibit 48 handed to the witness.)

20 THE WITNESS: This is 49, too.

21 Q. Showing you what's been marked here as
22 Plaintiffs' Exhibit 48, --

23 A. Uh-huh.

24 Q. -- I would ask you to look at that document and
25 tell me whether you can recognize having ever seen it

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1 before.

2 A. If you give me just a second to --

3 Q. Sure.

4 A. Yes, sir. And this -- and this would appear to

5 be a typical organization chart that is sent

6 throughout the organization.

7 Q. When you get into the actual charting box and

8 line information, it appears on the bottom of each

9 page --

10 A. Yes, sir.

11 Q. -- to say February 1994.

12 A. Yes, sir.

13 Q. If you take a look at chart two, which is the

14 marketing and sales group, does that appear to be an

15 accurate depiction of the organization of the

16 marketing and sales group as of approximately

17 February of 1994?

18 A. Just one second so I can look at --

19 Yes, sir, that's about what I would recall it to

20 be at that time.

21 Q. Now with regard to the question I've been

22 asking, where on this chart does the market share --

23 I'm sorry, the market research group appear?

24 A. That would be under --

25 If you're looking at chart two, --

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- 1 Q. Yes.
- 2 A. -- that would be under the vice-president of
- 3 BIAD, number 2B, I believe.
- 4 Q. Chart 2B you're looking at?
- 5 A. Yes.
- 6 No, no, no, no. I'm sorry. You're looking at
- 7 chart two. You asked where on this would it occur?
- 8 Q. Yes.
- 9 A. Under the box vice-president BIAD.
- 10 Q. There are --
- 11 A. And -- and it directs you to 2B.
- 12 Q. And that -- that is chart 2B; correct?
- 13 A. That's correct.
- 14 Q. All right.
- 15 A. So that the head on chart 2B would be Ernie
- 16 Fackelman, who's the vice-president of business
- 17 information.
- 18 Q. All right. For the record, we're now looking at
- 19 the page that has Bates number 508372580. Correct?
- 20 A. That's correct, sir.
- 21 Q. All right.
- 22 A. It's upside down here so it's hard to read.
- 23 And I would expect it to be under -- as I look
- 24 at this, it is probably going to be under the
- 25 director of business information systems listed here

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1 as W. P. Whitlatch, would be my guess.

2 Q. All right. So -- so that I'm clear, you -- you
3 believe that the market research group would report
4 in some way to the director of business information
5 systems?

6 A. No, that's not business information systems,
7 that's business information. Ernie Fackelman was
8 actually the head of marketing research. The
9 department at that time was called business
10 information and analysis, --

11 Q. Okay.

12 A. -- BIAD, a decision support or something. The
13 name has changed periodically over time.

14 Q. So the chart here that we're looking at on -- on
15 page 2B, --

16 A. Uh-huh.

17 Q. -- the vice-president of business information,
18 that is the market research group.

19 A. Yes, sir.

20 Q. Now turn a couple of pages beyond that to chart
21 2B-4 at page 508372584. Do you have that?

22 A. Yes, sir, I do.

23 Q. And on that page it would appear that -- it
24 starts with senior information manager corporate
25 projects, L. B. Smith. And if I turn -- if I flap

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1 back to chart 2B that we were looking at, that would
2 be the same L. B. Smith --
3 A. Yes, sir.
4 Q. -- on that page.
5 A. Yes, sir.
6 Q. That has a direct line of reporting to Mr.
7 Fackelman?
8 A. That's correct, sir.
9 Q. And under Mr. Smith on chart 2B-4 there is a box
10 for the manager of the Business Information Center;
11 correct?
12 A. That's correct. Barry Miller is the B. Miller.
13 Q. So that it would appear from looking at this,
14 the -- the problem you had with my question was that
15 you didn't see a distinction, and perhaps you're
16 right. This would seem to indicate that the Business
17 Information Center is indeed part of the market
18 research group designated here as the business --
19 A. Right.
20 Q. -- information group.
21 A. That's correct. But it also reports to, and
22 that's where I was having confusion.
23 Q. Okay.
24 A. Okay.
25 Q. And -- and I was trying to draw a distinction as

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1 to whether there was merely a reporting

2 relationship --

3 A. Oh, I'm --

4 Q. -- and they were somewhere else --

5 A. They are an integrated part of that unit.

6 Q. Okay.

7 A. I'm sorry. I now understand your question.

8 Q. Okay. That's fine.

9 A. It was helpful to look at that.

10 Q. It was helpful to both of us. Thank you.

11 In the process of -- of collection of documents
12 for litigation related to tobacco smoking and health
13 that we've been talking about here this morning, are
14 you familiar with how information, files and that
15 sort of thing, were secured from the business
16 information group?

17 A. I -- I cannot speak specifically, but I would --
18 I would see no reason why it would differ there
19 than --

20 I'm in the sales group. It was identical to
21 what it was when I was in the marketing group. I
22 can't believe there would be any reason that it would
23 be any different there. I assume the files are
24 picked up and scanned periodically. Again, that's
25 pretty much the policy I'm familiar with throughout

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1 the company, so -- at least, certainly, the areas
2 I've been involved in.

3 Q. Now in obtaining information in the marketing
4 side of the business on market share from the market
5 research group, how would that information be
6 communicated to you when you were a brand manager?

7 A. Most commonly it would simply be a monthly
8 market-share report. We generally tracked market
9 share by -- by month, so it would come to us in some
10 form of a monthly market -- market-share data sheet
11 of numbers usually.

12 Q. Are you familiar with the acronym F-U-B-Y-A-S,
13 all capital letters?

14 A. FUBYAS?

15 Q. Yes.

16 A. Yes, sir.

17 Q. What does that stand for?

18 A. Wow. Give me just a second and think.

19 I believe it stands for First Usual Brand
20 Younger Adult Smokers. Is that FUBYAS? Yeah.

21 Q. And how is it that you -- or -- well strike
22 that.

23 When did you first become familiar with that
24 term in any of the jobs that we've talked about here
25 today?

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1 A. It was a term, if my memory is -- is -- sticks
2 with me right here, I think it was a term that was
3 used in the early '80s, so it would have been
4 probably in one of my early marketing positions.

5 Q. Okay.

6 A. I don't know if it was as an assistant brand
7 manager, brand manager, senior brand manager, or
8 when.

9 Q. And what do you understand that -- that term to
10 mean? What's your understanding of that term?

11 A. My understanding was that when someone made a
12 decision to smoke, what brand that they then chose to
13 smoke is -- is what that term was referring to.
14 If -- if an adult smoker, younger adult smoker made a
15 decision I'm going to smoke, what was going to be
16 their first usual brand of choice.

17 Q. When you received market research data from
18 that -- from the business information --

19 A. Uh-huh.

20 Q. -- market research group, would it be broken
21 down by categories such as FUBYA?

22 A. Well I -- I honestly don't recall. I really
23 don't.

24 Q. Do you recall seeing any information from the
25 market research group that was related solely to the

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1 category of FUBYA?

2 MR. JONES: Note my objection, but --

3 Q. Or FUBYAS?

4 A. As I'm sitting here, I don't recall
5 specifically. There may or may not have been. I
6 just don't -- I can't recall any.

7 Q. Have you seen documents within the marketing and
8 sales department while you have been in these various
9 positions that related particularly to FUBYAS?

10 A. I have seen the term, I have probably used the
11 term in documents, but it's a goodly time ago that I
12 can recall ever having last seen it, and that's why
13 I'm sitting here trying to recall any specific
14 documents or documentation.

15 If we have them, I'm sure they were captured as
16 part of -- of our records for -- for our
17 record-retention policy, but I honestly, sitting here
18 right now, just can't think of anything specifically.

19 Q. And do you know what the acronym Y-A-S all caps,
20 refers to?

21 A. Younger Adult Smokers.

22 Q. And when is the first time that you can recall
23 encountering that term in any of the positions that
24 you've had at RJR Tobacco?

25 A. Probably about the same time. Actually that

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1 Younger Adult Smokers is the back half of FUBYAS,
2 First Usual Brand Younger Adult Smokers. Right.
3 Probably about the same time.

4 Q. Do you have an understanding as to what that
5 term, "younger adult smokers," means?

6 A. A common --

7 MR. JONES: Note my objection, but go
8 ahead.

9 A. A common definition that I might use is -- is
10 people -- adult smokers age 18 to 34, 18 to 24, who
11 made the decision to smoke. They are adults and they
12 are smokers.

13 Q. Now you said that that's a common definition
14 that -- that you might use. Do you mean that to be
15 that's your definition of the term?

16 A. Yes, sir. I think that's what you asked me for.

17 Q. Well I -- I asked you if you had an
18 understanding, and that certainly is an
19 understanding.

20 Let me ask you this: Are you familiar with a
21 definition of that term that is a corporate RJR
22 Tobacco definition of the term young -- younger adult
23 smoker?

24 A. I don't --

25 I believe I am, and I don't think it varies from

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1 my answer to you; it would be adult smokers age 18 to
2 34, perhaps with specific focus or emphasis on 18 to
3 24.

4 Q. Have you seen that term used with regard to
5 market-research data provided by the business
6 information group?

7 A. I don't recall if I've seen the term or if I've
8 seen tracking of 18- to 34-year-old smokers, but one
9 or the other I'm sure I -- I've been exposed to.

10 Q. And what kinds of -- again, what kinds of
11 documents would exist within the marketing and sales
12 area that would contain information with regard to
13 younger adult smokers?

14 A. Ah --

15 MR. JONES: Note my objection to the
16 extent --

17 Go ahead.

18 A. The kinds of documents, if there -- if there are
19 any tracking documents of the demographics of
20 smokers, of adult smokers, it would obviously be
21 contained in that, and I would expect that that would
22 be in the marketing research area. That may have
23 been incorporated into, or bits and pieces of that as
24 part of a rationale, into any marketing documents
25 where brand strategy may have been discussed. So

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1 other than that, I -- I can't think of examples just
2 sitting here. But again, those documents would be
3 generated either out of marketing or marketing
4 research and would have been captured as part of our
5 ongoing process to capture the documents that need to
6 be captured for litigation support.

7 Q. When these requests for documents came, and at
8 any time you were a manager, whether it was a brand
9 manager or vice-president --

10 A. Uh-huh.

11 Q. -- position, would you consider it to have been
12 your primary responsibility to make certain that all
13 of your people complied with requests for maintaining
14 documents and producing documents?

15 A. Absolutely, sir. That's -- that was a strong
16 company policy. It's part of the culture at
17 Reynolds.

18 Q. Similarly, if we wanted to look for documents
19 in the business information group, at least looking
20 at Exhibit 48, as it -- as it was in February of
21 1994, would that responsibility for making certain
22 that documents were maintained and produced been one
23 for Mr. Fackelman?

24 A. If they were marketing research reports and
25 documents, yes, they would have existed in Mr.

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1 Fackelman's groups and he would have had
2 responsibility for ensuring compliance.

3 Q. Do you have any reason to believe that there was
4 anything other than full compliance with production
5 requests out of the business information group?

6 A. No, sir.

7 Q. You've heard no reports within sales and
8 marketing that any information within the business
9 information group was not either maintained according
10 to company policy or produced according to company
11 policy?

12 A. No, sir, I'm not -- I'm not aware of anything
13 like that in actuality or even rumored.

14 Q. During the period of time that you've been in
15 the positions that you have outlined here for us this
16 morning, have you seen market research or market-
17 share information with respect to categories of
18 smokers younger than the age of 18 inside of RJR
19 Tobacco?

20 A. I don't recall -- with one possible exception --
21 I don't recall anything of that sort, and the one
22 exception I recall was -- was actually -- I don't
23 recall if it was circulated or shown by anybody
24 within our group, but it was a U.S. government report
25 on -- on smoker age groups which included smokers

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1 younger than 18. I don't recall how low down it
2 went. But other than that, I don't recall having
3 been experienced or exposed to any of those.

4 Q. Would the typical market-research data that you
5 would see with regard to market share for any
6 particular brands categorize market share by -- by
7 age of smoker?

8 A. It's -- it's possible --

9 It's possible that it could have been tracked by
10 demographics, yes.

11 Q. And I guess the question is: When you would get
12 these brand reports when you were brand manager --

13 A. Uh-huh.

14 Q. -- which you talked about being on a monthly
15 basis, would those tend to track by demographics,
16 by -- by age?

17 A. Unless it was specifically requested to,
18 probably not. The ongoing monthly reports would
19 simply show gross-share levels.

20 Was it tracked on a periodic basis? Probably.
21 I don't recall specifically. But we did look at
22 demographics, obviously, demographics being things
23 like age and sex, on all of our brands.

24 Q. And from your review of the information
25 available from the market research group in the

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1 business information portion of marketing and sales,
2 was there tracking of brand share of any RJR Tobacco
3 brands by category of age younger than 18 at any
4 time?

5 A. Not that I recall. That would --

6 We don't market -- that's been a strict company
7 policy -- to people under the age of -- of 18. It's
8 adult smokers. And that's been a pretty stringent
9 company policy. So there's really no benefit to
10 looking at that kind of data even. So that I recall
11 sitting here, no.

12 Q. How has that company policy been communicated
13 throughout the years of not marketing to people
14 younger than 18?

15 A. From a --

16 MR. JONES: Note my objection only to the
17 extent that I think we're going outside the scope of
18 the deposition notice. But we'll try to give you as
19 much leeway as possible, if we're not --

20 But go ahead.

21 THE WITNESS: All right.

22 MR. FINZEN: And -- and just for the
23 record, I'm -- I'm simply trying to find out the
24 kinds of ways particularly in documents that that's
25 been communicated so that I can inquire further with

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1 regard to document production.

2 Do you have the question in mind?

3 THE WITNESS: It would be helpful if you
4 wouldn't mind repeating it so it's real clear.

5 MR. FINZEN: Sure.

6 Q. How has that company policy with regard to not
7 marketing to anyone under the age of 18 been
8 communicated throughout the years to the people in
9 marketing and sales?

10 A. Well I can -- I can start off a personal
11 experience from the day I arrived at the company, and
12 I mean literally the first day I arrived, we began
13 our orien -- or process of orientation with the law
14 department as I came in as a marketing assistant, and
15 they took us through not only standing company
16 policies --

17 MR. JONES: I'm sorry. Go ahead, and just
18 as a matter of caution, go ahead and you can discuss
19 the general subject matter, but don't relate actual
20 discussions or conversations that were provided by
21 the law department. But you can proceed --

22 THE WITNESS: Okay.

23 MR. JONES: -- in terms of general subject
24 matter.

25 A. -- but received strong orientations on that.

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1 The company has always from my perspective taken its
2 responsibility very seriously; it is selling a legal
3 but controversial product, and it has insisted that
4 we sell it within the parameters of the laws that
5 have been laid out for us. And that has been
6 reinforced by every manager I have ever worked for.
7 I have reinforced it with my people. The company has
8 had numerous documents over the years that have been
9 circulated to its employees, whether it's been in
10 hard form, et cetera, stating our position.

11 There are -- three out of every four smokers in
12 the marketplace choose not to smoke a Reynolds
13 brand. That's who we are interested in getting,
14 adult smokers of competitive brands.

15 Q. And the policy that you say has been strongly
16 communicated with regard to not marketing to people
17 under the age of 18, has there been written
18 communication that you have seen over the years
19 concerning that RJR Tobacco policy?

20 A. Our position, I'm sure, has been --

21 I don't recall specifically, but I'm sure the
22 position, the formal position has been documented in
23 writing, yes.

24 Q. Have you sent written memos or other
25 instructions to people working under you concerning

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1 that policy in any of the positions that you've held
2 at RJR Tobacco?

3 A. Written instructions? I don't recall whether
4 I've ever written it, but I have verbalized it on
5 several occasions, and do to this day.

6 Q. To the extent that there are any written company
7 materials outlining the policy with regard to the
8 sale of any RJR Tobacco products to children, where
9 would -- where would those be filed? In what files
10 would those be housed?

11 A. So I'm clear on the question, the first part of
12 the question threw me a little bit.

13 Q. Sure. I'm asking about the policy about not
14 selling RJR Tobacco products to children, and I'm
15 asking, to the extent that is written, what kinds of
16 files would we find those written communications in?

17 A. To the extent that it is a policy, it would be a
18 policy -- you'd find it in probably the executive
19 files. When I say "the executive files," it was --
20 my recollection is that the chairman of the company
21 has -- has sent out notes on exactly that explaining
22 our position, so it would probably be in the
23 executive files. You'd probably find copies of it in
24 several of brands, sales, or marketing files because
25 those may have been things that are kept. And we --

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1 we do, if they're in the files, frequently the law
2 department makes duplicates, so they -- they would
3 logically have been captured as we've gone through
4 and done our sweeps.

5 Q. Have you seen any information prepared either by
6 the market research group within RJR Tobacco or any
7 outside company that would have been hired by RJR
8 Tobacco that addresses the question of the likelihood
9 of people becoming smokers based upon their age at
10 the time that they first smoke?

11 A. I -- I don't -- I don't recall anything of that
12 ilk. I'm not --

13 I think I understand your question, but I don't
14 recall ever having seen anything on that as I sit
15 here at all today. Knowing what our policy is, I
16 would have questioned it if I did.

17 Q. In working on particular advertising campaigns
18 when you were brand manager, --

19 A. Uh-huh.

20 Q. -- in working with the outside advertising
21 agencies, tell me how those campaigns would generally
22 be developed. Would they come to you about
23 advertising ideas that you would approve, or would
24 you initiate by giving them some information about
25 what it is you would like to -- to do by way of a

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1 market program and then they would develop ideas in
2 response?

3 A. We would generate pretty much objectives and
4 strategies, objectives we were trying to accomplish
5 and general strategic parameters. They would use
6 that information to develop advertising campaigns or
7 ideas that they came back to us with.

8 Q. And would you communicate those general
9 objectives and strategies that were RJR Tobacco
10 strategies to be accomplished in writing to the
11 advertising agencies?

12 A. When I was certainly involved in brand
13 management -- I can't speak, again, to more recent
14 times, but I have no reason to believe it's
15 different -- a -- a document would generally be
16 produced, yes.

17 Q. And would that document -- what --
18 What file within your files would that document
19 have gone into?

20 A. It would have gone into -- into one of --
21 Within my files.

22 Q. Right.

23 A. Indeed an advertising file or a campaign
24 development file, something of that ilk. It would
25 have been related to the creative or advertising

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1 being developed for the brand.

2 Q. Can you recall any time during which you had
3 responsibility for communicating those kinds of
4 objectives to develop an advertising campaign where
5 written RJR Tobacco objectives for a campaign would
6 not have been kept within an RJR Tobacco file?

7 A. No, sir. I can't --

8 As I sit here today, I -- I'm trying to even
9 imagine a situation why it wouldn't be, and I can't
10 think of one.

11 Q. And in developing those campaigns inside RJR
12 Tobacco, would those campaigns from time to time have
13 a particular demographic target audience in mind?

14 A. Yes, sir.

15 Q. And would that be set forth in the -- in the
16 written report of objectives that would go to the
17 advertising agency?

18 A. Yes, it would.

19 Q. In what ways, other than perhaps demographics by
20 age, would RJR objectives for advertising encompass
21 other kinds of demographic issues? Besides age are
22 there others?

23 A. Sex would be logical; certain brands are -- are
24 designed more to appeal to one sex than another.
25 Trying to think. Demographics. Income might be

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1 another demographic issue related to the design of
2 the packaging depending upon the income structure
3 you're looking at. Education might be a variable.

4 But really, age -- age, sex and income were --
5 were primary demographics that I recall as having
6 ever had any significant influence on direction.
7 There are probably others, but I'm not -- sitting
8 here right now, they're not popping into my mind,
9 those.

10 Q. Ethnicity, would that ever be one?

11 A. Ethnicity has been one, yes.

12 Q. And again, would those all be communicated as
13 part of the written statement of objectives --

14 A. Yes, sir.

15 Q. -- to the ad agency?

16 A. Yes, sir, they would. And again --

17 MR. JONES: Note my objection, only to the
18 extent that the presupposition to that is if those
19 objectives relate to that particular campaign.

20 THE WITNESS: Okay.

21 MR. FINZEN: Sure.

22 Q. Then as I understand it, once that was
23 communicated to the agency, the agency would begin
24 its work in terms of putting together cam -- an ad
25 campaign to meet those objectives.

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1 A. That's correct, from their perspective, to meet
2 the objectives, right.

3 Q. So in a simplistic sort of look at this,
4 objectives generated by RJR Tobacco are sent to the
5 agency, and those are --

6 Those objectives are developed internally by RJR
7 working just with its own personnel; correct?

8 A. Yes, although there are situations where, if
9 you've been working with an agency for a long time on
10 the brand and you were securing a new campaign, you'd
11 obviously have discussions with them about, you know,
12 which direction should we go, et cetera, what should
13 our objectives be. If there was any correspondence,
14 if we generated that correspondence, again it would
15 be in our files; if the agency generated it to us, it
16 would be in our files. So that's the -- the sole
17 exception I can think of off of top of my mind where
18 a, quote, outside party might be involved in that.

19 But back to your point, simplistically, we
20 ultimately have accountability for establishing the
21 objectives.

22 Q. And then that objective would be communicated in
23 writing and/or orally to the agency who would then
24 begin its work, again, pretty much at least at the
25 outset just within its own personnel within the

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1 agency.

2 A. Yes, sir.

3 Q. And then they would communicate their initial
4 work and ideas back to the sales and marketing group
5 or the brand group at RJR Tobacco?

6 A. The marketing brand group would -- and generally
7 that would come in a presentation form.

8 Q. Now what kinds of documents would they bring and
9 utilize in that presentation form?

10 A. If that presentation was in fact a presentation,
11 there was any hard, written document associated with
12 it, might have started out by simply feeding back to
13 us what the objectives were that we established for
14 it. So might simply be here, we've retyped your
15 objectives and let's review them; so they're now on a
16 glassine instead. And they'd give us a hard copy of
17 that presentation. It may have included any other
18 thoughts they had relative to the objectives of the
19 strategies being employed, and that it would result
20 ultimately in the presentation of creative against
21 that, and a discussion would -- would take place as
22 to whether or not we felt that creative met the
23 criteria that had been established.

24 Again, any of those documents, presentations, et
25 cetera, would have -- would have been left with

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1 Reynolds or copies left with Reynolds. As the brand
2 manager they would have gone into my files and they
3 would have been captured along with anything else.

4 Q. In terms of the initial work that was done by
5 the agency before that first presentation, were you
6 ever given the opportunity to see draft work or work
7 in process? Before the actual formal presentation of
8 the first round of information from the agency now
9 I'm talking.

10 A. When you say "draft work," I'm not sure. You
11 mean --

12 Q. Their work in process that led up to the -- to
13 the presentation to you and other people at RJR
14 Tobacco.

15 A. Not that I recall sitting here. I can't imagine
16 what the purpose might be of it. If the presentation
17 is to me as head of that brand, why would they show
18 me something that was work in progress? But I don't
19 recall any sitting here. I -- I can't say never, but
20 I -- it would -- it's unlikely.

21 Q. When you were the brand manager, the
22 back-and-forth of that campaign development, at some
23 point in time who had the final decision as to
24 whether it was a go or a no-go?

25 A. That would be --

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1 Whoever headed the marketing department had the
2 final decision authority on that. So that would have
3 varied as to who the member was over time, but it
4 might be the executive vice-president of marketing or
5 the executive vice-president of marketing and sales,
6 whoever had the title responsibility over the total
7 group.

8 Q. So that when you were the brand manager, would
9 the initial work have been done solely through you,
10 or would people higher up, your -- your superiors
11 have been involved in those presentation programs as
12 well?

13 A. All the -- all the real work would have -- when
14 I say "real work," the -- the give-and-take, the
15 providing of direction would have been provided
16 through the brand manager. People in --

17 My boss may have sat through a presentation or
18 two, but the work and the responsibility for that
19 work rested with the brand manager.

20 Q. So would it be accurate to say that -- that the
21 initial decision, if one was to go ahead with a
22 particular campaign, was made by the brand manager
23 and then approved upstream until it was ultimately
24 approved by the marketing vice-president for that
25 particular brand?

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1 A. Yes, sir. That's -- that's generally how it
2 operated. Now obviously when structures change and
3 people are out for periods of time, there are --
4 there are situations where I'm sure the approval
5 process worked a little differently. But that's a
6 good generalization.

7 Q. And any communication in writing with regard to
8 the -- a proposed campaign, when you were brand
9 manager, that went internally in RJR Tobacco would
10 have been housed in -- in your files?

11 A. I would have -- I would have generated that --
12 that writing as the brand manager, and it would have
13 been captured -- housed and captured in my files,
14 that's correct.

15 Q. Has it been your practice to maintain some sort
16 of a chronological file of correspondence that you
17 generate with the company?

18 A. It has not been my practice. I've had
19 secretaries who have done it simply in case I asked
20 for a document; they remember it better that way.
21 But no, I have not personally kept chronological
22 files.

23 Q. When your secretaries have maintained
24 chronological files, do you know whether those files
25 have been reviewed during this review process --

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1 A. Oh, yes, sir.

2 Q. -- by the law department?

3 A. Yes, sir. When they go through they capture not
4 only my files, my secretary's files, any files we may
5 have in an adjacent office. They ask us both before
6 we come to have all the files, and when they come do
7 we have all the files. They don't leave anything out
8 and we don't leave anything out. There's no reason
9 for us to. Again, it's a matter of company policy
10 and people are expected to comply.

11 Q. With regard to one of these campaigns that we've
12 been talking about for the last few minutes here,
13 would that have been the process that was followed
14 for developing advertising campaigns of all of the
15 print type that we talked about, newspaper and
16 magazine --

17 A. Yes, sir.

18 Q. -- as well as billboard?

19 MR. JONES: Again note my objection to the
20 extent he indicated there may, you know, over the
21 years, have been one exception of one kind or
22 another, just generally. But go ahead.

23 A. And again, we're generalizing when we're having
24 a lot of these discussions, and that is the general
25 process, yes, and it would be generally consistent

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1 regardless of the format.

2 Q. Within RJR Tobacco advertising -- or I'm sorry,
3 marketing and sales, --

4 A. Uh-huh?

5 Q. -- has there been a policy since you've been
6 with the company with regard to the kinds of
7 magazines in which cigarette advertisements would or
8 would not be placed?

9 A. Has there been a policy?

10 I know we have had a policy. When I was in
11 brand management we had a media department that was
12 part of the marketing department. We did not place
13 ads in -- in publications, magazines, et cetera, that
14 were targeted towards non-adults. The specifics of
15 that policy and how they implemented it I don't know,
16 but I know we had a very restricted list of
17 publications, and I think that was appropriate and
18 proper.

19 Q. Have you seen the policy with regard to not
20 targeting magazines that had as a principal audience
21 children, in print or in writing somewhere within RJR
22 Tobacco?

23 A. I don't know -- I don't --

24 Sitting here, I don't know as I recall that.

25 Again, the media department at the time would have

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1 been responsible for providing us a list of books

2 that we could ultimately pick from --

3 "Books" meaning magazines.

4 Q. I understand.

5 A. I'm sorry.

6 -- that we could ultimately pick from, and

7 those were pre-screened before that list ever came up

8 to us. I'm sure they were operating off of

9 guidelines or policy; I just don't know what it was

10 specifically.

11 Q. You don't recall having ever seen that written

12 policy or guideline?

13 MR. JONES: Other than the document of --

14 of accepted publications.

15 A. Yeah, I -- I don't -- I don't specifically

16 recall it. I may have. But again, that's -- that's

17 one of those issues that just wasn't questioned.

18 Q. The list of books that -- from which ads -- or

19 in which ads could be placed, that is a written

20 document that you've seen; correct?

21 A. I don't know if it was ever listed or I've --

22 I've seen a list of publications. I wouldn't say it

23 was necessarily a comprehensive list of publications

24 that we do use. Pretty generally the media

25 department, when it came time to place advertising,

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1 would come down to us with a recommended media plan.
2 That recommended media plan may have been worked out
3 entirely by themselves or in conjunction -- in
4 conjunction with the advertising agency. And at that
5 point it was usually a manager -- matter of seeing
6 how budgetarily we could make things work best.

7 Q. And to the extent there was any kind of a policy
8 that gave rise to the list of approved books, that's
9 the written policy you say you don't recall ever
10 having seen, if it exists. I'm not suggesting it
11 does, I'm just saying if it exists, you don't recall
12 ever having seen it.

13 A. I don't -- I don't recall ever having seen it.
14 My strong suspicion -- not suspicion. I would be
15 very surprised if such a policy or list does not
16 exist.

17 Q. And if it did, where -- where would it have been
18 maintained within the files of RJR Tobacco?

19 A. It would have been maintained at the time in
20 our -- in our media department group, and would be to
21 this date.

22 Q. Is that part of the marketing and sales group?

23 A. Yes, sir, it is.

24 Q. If we --

25 If we look at Plaintiffs' Exhibit 48, if you

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1 still have that in front of you, --

2 A. Yes, I do.

3 Q. -- where on those charts would that group be
4 found?

5 A. Well the group was significantly downsized in
6 and around this time, so it might take me a minute to
7 find it here.

8 Q. Sure.

9 THE REPORTER: We have to go off the record
10 to change tape. Off the record, please.

11 (Discussion off the record.)

12 A. Mr. Finzen, I think the -- the question you've
13 asked me is where that media group would be found on
14 this chart.

15 Q. Correct.

16 A. If you will turn to -- this is the February 1994
17 chart. If you will turn to chart 2A.

18 Q. And that's the chart that's at Bates number
19 508372577?

20 A. That's correct, sir. And if you'll go over to
21 the second line down, the far right box,
22 vice-president relationship marketing, E. M.
23 Blackmer?

24 Q. Yes.

25 A. And underneath him you'll see P. F. Ittermann,

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1 senior manager media, J. M. Williard, assistant
2 manager media administration, that's where the media
3 department at that point would have been found. This
4 was shortly after our downsizing.

5 Q. Do you know who was responsible for the
6 maintenance and production of documents pursuant to
7 the policies that we've talked about here today for
8 litigation related to smoking and health issues for
9 the media department?

10 A. Could you -- the first part of that question,
11 who's responsible for the what, production?

12 Q. For maintaining the documents and producing them
13 pursuant to the policy that we -- that you've
14 articulated here this morning for RJR Tobacco
15 concerning maintenance of documents and production of
16 documents related to smoking and health litigation.
17 For the media department, who would have had that
18 responsibility?

19 A. Well, whoever was heading media. Ultimately it
20 goes -- they have been through the marketing
21 department, obviously, so they would have fallen
22 under the same guidelines as it relates to the
23 maintenance of records. Production of records or
24 documents is a different issue, and --

25 So back to the question. As I -- as I pointed,

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1 the individuals responsible here, as I just
2 demonstrated on the chart, would basically be the
3 individuals with that responsibility.

4 Q. And you have no specific knowledge with regard
5 to how that was carried out for that group.

6 A. No, sir, I have no specific knowledge.

7 Q. Is there anyone that you know inside of the
8 sales and marketing group at RJR Tobacco who would
9 have sort of an umbrella, overall knowledge about the
10 policy of maintaining and producing documents
11 pursuant to the RJR Tobacco policies for documents
12 with regard to litigation concerning issues of
13 smoking and health?

14 MR. JONES: Note my objection.

15 A. Specific within the marketing department?

16 Q. Any one person that would have knowledge that
17 encompassed all of the various areas on chart two,
18 for example, in Exhibit 48.

19 MR. JONES: Note my objection. I think
20 that's been asked and answered. But go ahead.

21 A. No one that I'm aware of that would have any
22 better knowledge than I have.

23 Q. And with regard to your particular area from
24 1995 to the present, during which time I will
25 represent to you is the period of time when documents

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1 have been produced -- demanded, requested and
2 produced in the Minnesota litigation, are you
3 familiar with any work that has been done to search
4 outside of RJR Tobacco for documents that would be
5 responsive to requests made in the Minnesota
6 litigation?

7 A. Outside of RJR Tobacco.

8 Q. Yes.

9 A. No, sir, not that I can think of sitting here.

10 Q. And by that I mean any third-party sites like
11 advertising agencies that may have been used by RJR
12 Tobacco. Are you familiar with any efforts that have
13 been made to search those locations for documents
14 responsive to any requests in the Minnesota
15 litigation?

16 A. No, sir, I'm not familiar with that. The only
17 thing I am familiar with is I believe our local sales
18 offices in Minnesota, documents were reviewed, which
19 was, I thought, kind of unusual because the
20 likelihood of discovering anything of value there,
21 since they are largely operational documents, who's
22 got what car, et cetera, is very low. But I believe
23 that actually was -- was searched as part of that
24 process.

25 Q. Those would be considered, however, part of the

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1 RJR sales and marketing --
2 A. Yes, sir.
3 Q. -- locations; correct?
4 A. Yes, sir.
5 Q. And my question really goes to -- to any
6 locations that would be true third-party, outside of
7 RJR Tobacco.
8 A. Yes.
9 Q. You have no knowledge about that.
10 A. I have no knowledge of that, no.
11 Q. Do you know of anyone inside of sales and
12 marketing that does have knowledge about that with
13 regard to production of documents in the Minnesota
14 litigation?
15 A. No, sir, I cannot -- I do not know of anybody.
16 Q. Let's talk for a moment about the local sales
17 offices. How -- how many of those, such as the
18 Minnesota office that you made reference to a few
19 minutes -- or a moment ago, are there in the current
20 RJR sales group?
21 A. In -- in the current structure we have 20
22 regional offices. I described to you earlier, in our
23 structure I have four of those regional offices.
24 Q. And how are those offices maintained by way of
25 personnel? Who -- what kind of personnel are in

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1 those offices?

2 A. All the people in those offices are field
3 salespeople who are responsible for specific tasks --
4 tasks within that geography. You would have the
5 regional manager and a couple of managers assisting
6 him and some coordinators responsible for all of the
7 administrative aspects of the business. It's also
8 possible you might have a division manager located in
9 that office if it's convenient and it was a
10 co-location place for them, but that's the exception
11 rather than the rule.

12 Q. Your responsibilities, as I recall it today, is
13 for the western region; right?

14 A. Yes, sir.

15 Q. How many other regions are there?

16 A. There are four sales areas currently. And we
17 refer to them as sales areas. The regions are the
18 subgroups that there are 20 of.

19 Q. All right. When --

20 Help me here because I'm not remembering now.

21 When you talked about your responsibility being from
22 Houston, --

23 A. Middle Montana.

24 Q. -- middle Montana west, is that a sales group or
25 a region?

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- 1 A. That's a sales area.
- 2 Q. Sales area.
- 3 How many sales areas are there?
- 4 A. There are four sales areas.
- 5 Q. And which sales area does the Minnesota region
- 6 fall into?
- 7 A. The midwestern sales area.
- 8 Q. And is this sort of like the NCAA? Do the other
- 9 two regions, are they known as the southeast and
- 10 the -- and the east?
- 11 A. And the northeast.
- 12 Q. And the northeast.
- 13 (Laughter.)
- 14 A. Except is there's no grand tournament at the end
- 15 of the year.
- 16 Q. Now a moment ago you said you believed that the
- 17 Minnesota sales office had its documents reviewed as
- 18 well for production in the Minnesota litigation.
- 19 A. Yes, sir.
- 20 Q. And you said you thought that was somewhat -- I
- 21 think you used the term "unusual."
- 22 A. Yes.
- 23 Q. Is that correct?
- 24 Do you know whether these sales offices have
- 25 routinely had their records reviewed pursuant to the

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1 ongoing document-review policy that we've talked
2 about here this morning, at least inside of RJR
3 Tobacco in -- in the Winston-Salem offices?

4 Do you understand the question?

5 A. No. The last part really threw me. I'm sorry.

6 Q. Yeah. And it got -- it got confused at the end.

7 You've described the policy that I have
8 understood was company-wide, and -- and then you --

9 A. Uh-huh.

10 Q. -- talked about it as it affected you being
11 housed here in Winston-Salem. My question is: Do
12 you know whether, within the sales and marketing
13 area, that policy has routinely been implemented in
14 the sales offices outside of the --

15 A. Yes.

16 Q. -- state of North Carolina?

17 A. Yes. They are subject to the same document-
18 retention company policies as -- as we are. The
19 reality is this: The -- any strategic or directional
20 documents that are in their files are files -- are
21 documents that are generated out of Winston-Salem.
22 The documents that they generate locally in their
23 files tend to be all operational/executional types of
24 documents that talk about, again, who's got what car,
25 who's got a computer and what are the numbers on it,

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1 processing of forms, et cetera.

2 What I meant by "unusual" was I believe, as part
3 of the -- the specific discovery process related to
4 this case, even though we were not very likely to
5 find anything in those files, they went to
6 Minneapolis or went to Minnesota and went through
7 that -- that operation up there. Our experience has
8 been it's highly unlikely to find anything because
9 they are so operational in orientation. Any
10 documents that exist we already have copies of
11 because they were generated out of Winston-Salem and
12 already captured as part of our files.

13 Q. Would any documents from those regional sales
14 offices -- let me make it broader than that -- any
15 sales offices outside of North Carolina be maintained
16 until they were no longer actively used and then sent
17 to the records retention center here in North
18 Carolina at that point in time?

19 A. Yes, sir, that's my understanding.

20 MR. FINZEN: Off the record a moment,
21 please.

22 THE REPORTER: Off the record, please.

23 (Recess taken.)

24 (Plaintiffs' Exhibit 54 was marked
25 for identification.)

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1 BY MR. FINZEN:

2 Q. Mr. Sanders, I am showing you now what's been
3 marked as Plaintiffs' Exhibit 54, and I would ask you
4 to take a look at that and tell me whether you have
5 seen this document or its attachment -- I'm sorry,
6 this letter and the document attached to it before.

7 A. Do you want me to read it at this point?

8 MR. JONES: Take a minute and read it, just
9 the letter.

10 THE WITNESS: Okay.

11 A. Sorry to take so long, but the language is awful
12 precise, and I'm still not sure I understand some of
13 it.

14 Q. Have you seen this before?

15 A. No, sir.

16 Q. We talked a little bit earlier about the
17 Business Information Center.

18 A. Uh-huh.

19 Q. Correct?

20 A. Yes, sir.

21 Q. If you will turn, please, to the fourth page of
22 Exhibit 54, which has a title on it called "RJR
23 BUSINESS INFORMATION CENTER, parens, BIC, close
24 parens, CATALOG, colon, SPECIAL REPORTS," and then
25 the lower right has an "EXHIBIT H," do you see that?

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- 1 A. Yes, I do.
- 2 Q. Are you familiar with this document?
- 3 A. No, sir, I am not familiar with this document.
- 4 Q. Are you familiar generally with the fact that
- 5 the Business Information Center either maintains
- 6 or -- or produces from time to time special reports?
- 7 A. Yes, I am.
- 8 Q. Tell me what your understanding is as to the
- 9 nature of those special reports.
- 10 A. Business Information Center would normally -- or
- 11 I don't know as they produce them. The marketing
- 12 research is -- is initiated in producing marketing
- 13 research reports either on an ongoing or
- 14 special-topic basis, which the Business Information
- 15 Center has responsibility for capturing and
- 16 maintaining in a file, a working file for access by
- 17 RJR Tobacco marketing employees.
- 18 Q. And to the extent, then, that there are a
- 19 catalog of special reports in the following pages
- 20 after the title page we've looked at, list a series
- 21 of information that across the top of each page is
- 22 identified by a document number, a title, an author
- 23 and a Bates number, do you see that?
- 24 A. Yes, I do.
- 25 Q. Are you familiar with the fact that some of

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1 these, at least by title, are reports that are
2 contained within the Business Information Center?

3 A. I --

4 As I'm glancing through this, I'm not personally
5 familiar with any of the specific titles, but this is
6 the type of information I would expect to be
7 maintained by the Business Information Center.

8 Q. And in the Business Information Center is there
9 a database of reports that they maintain?

10 A. I believe the Business Information Center does
11 carry -- does keep a track, if you want to call that
12 a database, of all the reports that they keep on
13 file, yes.

14 Q. Do you know how that is done, whether it's by
15 some sort of a written index or by a computerized
16 index?

17 A. No, I do not.

18 Q. Have you ever had occasion yourself to request
19 reports from the Business Information Center?

20 A. I've had occasion to request reports as a brand
21 manager from whoever my marketing research
22 counterpart was. They in fact would have gone to the
23 Business Information Center. And I may have given
24 them a topic area, any old Camel advertising learning
25 or any other Winston advertising learning from the

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1 last two years, and they would have gone to search
2 for it. How they did that exactly I don't know.

3 Q. In terms of the kinds of reports that would be
4 housed in the Business Information Center, do you
5 have an idea as to -- I'm sorry -- do you have an
6 understanding as to what qualifies to be a report
7 that would be maintained within the Business
8 Information Center?

9 A. My belief, and it may extend beyond this, but my
10 belief is that these were official business
11 information research reports that were requested and
12 generated by our research department. That's what I
13 would expect to find there.

14 Q. And your expectation would be that all of the
15 documents housed there would have been authored by
16 people who were employees of RJR Tobacco?

17 A. Generally speaking that would be the case. I --
18 I don't know of any --

19 There may be a document or two, but I -- I don't
20 know what it would be, that was generated in part or
21 in whole outside, or attachments of newspaper
22 articles or something, but my understanding is
23 generally those are documents produced by our
24 research department in response to specific research
25 requests that marketing or somebody in management

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1 has.

2 Q. Do you have as you sit here today any knowledge
3 about the production of documents from the Business
4 Information Center specifically for the Minnesota --
5 State of Minnesota litigation that we're here today
6 on?

7 A. Other than you've just provided me a letter that
8 suggests that -- that whatever we have is a -- is a
9 database, and -- and I guess there's some kind of an
10 index way of looking at this, has been provided to
11 you, other than that I don't know.

12 Q. So other than what you've seen here today, you
13 have no specific knowledge about production of
14 Business Information Center data in the Minnesota
15 litigation.

16 A. No, sir.

17 Q. If you turn to page four of the actual special
18 reports catalog.

19 A. Page four starting at Exhibit H?

20 Q. No. Looking at the page numbers on the bottom
21 of the pages. Some of them --

22 A. Oh, some -- okay. I'm with you.

23 Q. All right. On that page, the fifth entry
24 down -- six, I'm sorry, the sixth entry down has an
25 author by the name of Burrows. Do you know who that

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1 individual is?

2 A. I remember a Diane Burrows who used to work in
3 our marketing research department, yes.

4 Q. Did you have occasion in any of the positions
5 that you've had at RJR Tobacco to work with her?

6 A. Because the departments are small, I'm sure I --
7 I'm sure I worked with her at one point or another.
8 I don't recall over what or what the issues were at
9 the time.

10 Q. If you go three entries below that, there's a
11 name of Nordine that appears. Is that name familiar
12 to you?

13 A. Yes, sir. That's Dick Nordine I believe.

14 Q. And what was Dick Nordine's position with the
15 company while you've been in any of these --

16 A. Ah. Well, he was in marketing research the
17 entire time I was with the company, as was, to the
18 best of my knowledge, Diane Burrows. They've always
19 been in the marketing research department and a part
20 of the marketing department. The specific positions
21 they held at any given point in time I honestly have
22 no recollection of.

23 Q. Have you had occasion to work with Mr. Nordine
24 in any of the positions that you've outlined today?

25 A. Again, I am sure I have, but I don't recall the

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1 specifics of them. I've worked with pretty much
2 everybody in research at one point or another.

3 Q. To your knowledge did Ms. Burrows have any
4 particular specialty within the market-research group
5 at RJR Tobacco?

6 MR. JONES: Note my objection to the extent
7 it calls for speculation.

8 A. I -- I don't know if she had a specialty or
9 not. I -- I really don't recall.

10 Q. What about Mr. Nordine, do you know whether he
11 had a particular specialty within the marketing
12 research group at RJR Tobacco?

13 A. The only thing I recall about Mr. Nordine, he
14 was involved in a lot of our long-term segmentation
15 work at one point, market segmentation work. But
16 other than that I do not recall.

17 Q. What does that term, "long-term segmentation --
18 market segmentation" mean?

19 A. Market segmentation would simply be how the
20 brand -- how the marketplace of the universe of
21 smokers divides up in terms of brand -- types of
22 brand preferences, demographics. You'd look at a
23 variety of different kinds of issues, demographics,
24 psychographics, et cetera, to try and ascertain where
25 there may be opportunities for a brand to be

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1 successful in the marketplace that are not currently
2 addressed by brands that already exist in the
3 marketplace, or opportunities to reposition your
4 brand in the marketplace.

5 I hate to use gobbledygook. That meant
6 something to me. I hope it -- it's marketese, so --

7 Q. From time to time in any of the positions that
8 you've held at RJR Tobacco, do you recall reading any
9 reports written specifically with regard to the
10 segment -- market segmentation that have been
11 authored by Mr. Nordine?

12 A. I am sure I have read market segmentation
13 reports and probably sat in presentations. Whether
14 they were specifically authored by Dick Nordine or
15 not I don't recall. I really don't.

16 Q. And if reports like that were generated by Mr.
17 Nordine or anyone else in the market-share research
18 group and they came to you, would those have been
19 maintained by you in your files?

20 A. If it was originated by Mr. Nordine?

21 Q. Yes.

22 A. If I had put it into a working file, yes, I --
23 it would have. If I had simply read it and -- and
24 returned it and made no notations on it, knowing that
25 it would have been captured in his files and by BIC,

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1 I would not have retained it.

2 Q. Do you recall specifically whether any of the
3 working files you had over the years as brand
4 manager, and in the other positions you've outlined,
5 contained reports from the market-share group, any of
6 the -- any of the working files that you had?

7 A. I'm not sure I tracked your question.

8 Q. Sure.

9 A. I'm sorry.

10 Q. I'm -- I'm asking whether, in sort of follow-up
11 to the answer you gave me in the last question,
12 whether you can recall times when indeed you did find
13 that a market-share report was of significance to a
14 project you were working on at that point so that you
15 filed it and it went into the working file.

16 A. Oh, absolutely. If I had need to multiply
17 reference it or -- or send it on -- send a copy on to
18 someone else so we could discuss it, absolutely.

19 Q. And so what you would be getting from either --
20 hypothetically Mr. Nordine -- would be a copy of a
21 report from him or from the Business Information
22 Center that you would either use or return; correct?

23 A. That's correct.

24 Q. And if you used it, it would go into the file in
25 which you were using it and would --

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1 A. Would be captured.

2 Q. -- be permanent --

3 A. Would be captured. And, as a matter of fact,
4 I'm sure we've got multiple copies of some of these
5 things because they captured mine, they might have
6 captured another brand manager's, they captured it
7 down in BIC. And I'm sure we have a lot of documents
8 that have been captured, and it's as part of our
9 process. There may be some variations; some of them
10 would have handwritten notations on them. We would
11 always make sure that if there were things like that,
12 they would be captured and kept.

13 Q. And is there any policy that you're aware of
14 that said at the end of the time that you were
15 utilizing that Business Information Center market-
16 share report in an active file, that you would return
17 it to the Business Information Center?

18 A. Well you -- you never got the original that I'm
19 aware of. Again, I wasn't involved in that direct
20 process, but you got a copy from the Business
21 Information Center and you never got the original.

22 Q. Right.

23 A. They kept that there.

24 Q. But I'm talking about the copy now. Was there
25 ever a policy in place that these kinds of reports,

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1 while they could be filed while they were actively
2 being used, when you were done using them, even the
3 copy should be returned to the Business Information
4 Center?

5 A. Not that I recall. There was never any
6 specification as to where the copy should -- should
7 end up.

8 As a generalization, in my case and I believe
9 the case of others, they -- they ended up being
10 picked up as part of the sweepthroughs, again, when
11 people were collecting documents and data, and
12 probably are redundant documents.

13 Q. As you sit here today, do you have any knowledge
14 concerning whether reports that may have been
15 authored by Diane Burrows have all been produced in
16 the Minnesota litigation?

17 A. I have no reason to believe they wouldn't be.

18 Q. Do you have any knowledge one way or the other,
19 specific knowledge about that issue?

20 A. Specifically related to Diane Burrows?

21 Q. Yes.

22 A. No, sir.

23 Q. Or to Mr. Nordine?

24 A. Not that -- not that I'm aware of.

25 Q. Or anyone else who may have authored reports

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1 that are -- that would be housed in the Business
2 Information Center, you wouldn't have specific
3 information about whether all of their reports in the
4 Business Information Center were or weren't produced?

5 A. I do not have specific information on that.

6 Q. Is Diane Burrows still an employee of RJR
7 Tobacco?

8 A. Not to the best of my knowledge, and has not
9 been for a number of years.

10 Q. In your position in marketing and sales that you
11 currently have, do you interact at all with Canadian
12 sales offices?

13 A. We have -- we literally at --

14 At Reynolds, we have no interaction with our
15 international counterparts pretty much anywhere,
16 certainly nothing of an ongoing basis. They're
17 pretty much a separate company from -- from Reynolds
18 Tobacco in the United States. Their businesses are
19 different. And, no, there's really no interaction.

20 Q. So to the extent there is sales and marketing of
21 RJR Tobacco products in Canada -- and I'm talking
22 just about Canada now -- how is that handled?

23 A. Oh. Because I --

24 I know generally because I understand our
25 corporate structures. They -- I believe Canada is

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1 part of RJR McDonald. I think that's part of
2 International's North American structure, but -- but
3 I'm not real sure. Again, they are a separate
4 company from us and there is very little interaction.
5 Occasional telephone call on a specific issue, but no
6 ongoing interaction at all. Because what they do and
7 what we do are totally different from one another.

8 Q. And there is no one that is housed in the RJR
9 Tobacco Winston-Salem offices that is involved with
10 the Canadian sales of RJR Tobacco products?

11 A. I don't know if that's the --

12 I don't know if that's a true statement or not.
13 International, our International tobacco operation
14 has been variously housed in Winston-Salem, in
15 England, in Winston-Salem again, now in Geneva,
16 another time I believe in Geneva, as many of our
17 corporations headquarters were here, but whether they
18 were here or in Geneva, the interaction between the
19 two companies was the same: it didn't exist. We
20 were two companies who were probably co-located in
21 the same city as a convenience to management when the
22 corporate headquarters was there as much as anything,
23 but there's little interaction.

24 Is there possible -- possibly somebody in the
25 building right now -- because we do produce some

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1 product for them, I know, overseas -- that -- that
2 coordinates a lot of that? Very possibly. But I
3 have no idea who they are and where they are in the
4 building.

5 Q. And to the extent that there is anybody that
6 would have to do with sales and marketing of RJR
7 products in Canada, you have no routine interaction
8 with that individual?

9 A. No, none whatsoever. And there is nobody that
10 I'm aware of currently in Winston-Salem that is --
11 that is involved in sales and marketing for any of
12 our international operations.

13 Q. During the period of time that we've outlined
14 here in the various job positions that you've had,
15 have you had responsibility for any coordinating
16 or -- or originating any Joe Camel advertising
17 campaigns?

18 A. You're -- you're -- the two --
19 The two active parts of your question were for
20 doing what?

21 Q. For -- I guess I'm not sure I'm using the right
22 words either -- coordinating or -- or organizing Joe
23 Camel advertising campaigns.

24 A. Camel -- Camel as a brand I have had
25 responsibility for as -- as marketing director. It

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1 has fallen under my responsibility for -- as
2 vice-president of brand management. Joe -- Joe Camel
3 or the Camel -- current Camel campaign has been part
4 of my responsibility as my brand responsibility in
5 those capacities, yes.

6 Q. Have you at any time in working on a Camel ad
7 campaign that involves the -- the character Joe
8 Camel --

9 A. Uh-huh?

10 Q. -- worked with any groups outside of the United
11 States in coordinating that campaign?

12 A. In coordinating the campaign?

13 Q. Yes.

14 A. Not that I recall sitting here.

15 Q. In organizing the campaign?

16 A. Not that I recall sitting here.

17 Q. So to your knowledge you've had no involvement
18 with a Joe Camel character ad campaign that is
19 coordinated in any way with Canada?

20 A. No, sir.

21 Q. Do you know whether the Joe Camel character is
22 even used in advertising campaigns in Canada?

23 A. No, I do not. I don't know if it's used
24 anywhere else in the world.

25 Q. In any of the positions that you've occupied at

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1 RJR Tobacco, have you had occasion to as part of
2 those responsibilities work with The Tobacco
3 Institute?

4 A. I have never had direct involvement with The
5 Tobacco Institute, no.

6 Q. Do you know whether sales and marketing
7 materials from RJR Tobacco have ever been exchanged
8 or sent to The Tobacco Institute?

9 A. Excuse me, I'm trying -- I'm going back trying
10 to think if there are any situations or circumstances
11 I could even imagine why. I'm unaware of any sitting
12 here that I can think of. I don't know whether
13 there --

14 I'm unaware of any. I don't know whether there
15 ever has been.

16 Q. Are you familiar at all with a group of
17 documents that have been in certain places referred
18 to as the Mangini documents?

19 A. I -- I don't know --
20 No, I'm not.

21 Q. Are you familiar with a lawsuit where the name
22 of the plaintiff is Mangini?

23 A. Yes, sir, I am.

24 Q. What does it --

25 How is it that you're aware of that particular

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1 lawsuit?

2 A. The name I have heard probably through news
3 media as -- the same as any -- as anywhere else.
4 The --

5 Specifically recently, however, I would guess
6 probably about four weeks ago, much the same as was
7 the case here, I was approached and asked some
8 questions about my knowledge of things which I was
9 told was related to the Mangini case for possible
10 future use.

11 Q. Approached by whom?

12 A. Someone in the law department, our law
13 department.

14 Q. What particular knowledge do you have that may
15 be related to the Mangini case?

16 MR. JONES: Well to the extent that calls
17 for any attorney-client communication or attorney
18 work product, I would instruct you not to answer. To
19 the extent you have some independent understanding or
20 knowledge relating to the Mangini case, you may go
21 ahead.

22 A. I don't even know what the specifics of the case
23 were. I think the interest is in what I know about
24 volumes of products sold in California, how much our
25 volume was or share was.

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1 Q. Have you had any involvement with respect to
2 document-production issues in the Mangini case?

3 A. No, sir, not that I'm aware of, other than I may
4 have had documents taken out of my files that are
5 part of that discovery process. But -- but I'm
6 unaware of it.

7 Q. Are you aware whether documents that have been
8 produced in the Mangini case have also been produced
9 in the Minnesota litigation?

10 A. No, sir, I'm not -- I am not aware.

11 Q. And if there were a group of documents that were
12 produced in the Mangini case that were not produced
13 in the Minnesota litigation, would you know that?

14 A. If there -- if there were a group of documents
15 produced --

16 Please, again.

17 Q. In the -- in the Mangini case that had -- has
18 not been produced in the Minnesota case, would you
19 know that?

20 A. No, I would not.

21 MR. FINZEN: Can we go off the record for a
22 moment.

23 THE REPORTER: Off the record, please.

24 (Recess taken.)

25 BY MR. FINZEN:

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1 Q. Mr. Sanders, through the years, do you have some
2 sort of a -- an idea of the number of your documents
3 that have been Bates stamped in this process that
4 we've been talking about today, taken, Bates stamped,
5 and returned to you?

6 A. Just a clarification. Is the Bates stamp the
7 little numbers?

8 Q. The little numbers that you say you've seen on
9 the pages from time to time.

10 A. I -- I couldn't begin to estimate.

11 A lot. I'd say almost half of my files when
12 they come back have -- have those on them.

13 Q. And from time to time have you had occasion to
14 have some of your files and records boxed up and sent
15 to the records center, the RJR Tobacco records
16 center?

17 A. Yes. Either myself or my secretary would have
18 boxed them and sent them to the records center.

19 Q. And having done that, have you ever had occasion
20 where you needed to re-call a file from the record
21 center?

22 A. No, sir, I have not. Pretty generally those
23 files are working files, and when they're inactive
24 for a period of time, we send them, and I never need
25 to see them again.

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1 Q. And has it been your understanding, with regard
2 from at least 1984 forward, that all documents within
3 your marketing and sales responsibility that were
4 generated were to be maintained and not destroyed?

5 A. Yes, sir. As a matter of fact, since before
6 1984.

7 Q. And does that include --

8 A. Now when you say "all documents," the only
9 thing, all documents that may pertain to litigation.
10 When it comes down to operational documents and,
11 again, logistics documents and things about moving
12 things from point A to point B by Tuesday, those
13 things are -- are not ever captured. People look at
14 them frequently and -- and they don't come back with
15 what you refer to as Bates numbers on them. So --

16 But all relevant documents, it's clearly my
17 understanding that those have been picked up. It's
18 been my experience that that has -- is the case.

19 Q. What is your understanding with regard to the
20 policy for documents in your files when they have
21 been reviewed and come back and they aren't Bates
22 numbered, they aren't in some way indicated that they
23 have been selected for copying for litigation
24 purposes, what's your understanding with regard to
25 your ability to destroy those documents?

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1 A. Well as a general -- as a general rule, those
2 documents get sent along with the rest of the file to
3 the -- to our document-retention center. But if they
4 do not have a Bates number on them, my understanding
5 is that we are free to purge those documents if we'd
6 like to.

7 Q. And has that been your understanding since at
8 least 1984?

9 A. It's been my understanding since I've been
10 involved with this process, which -- certainly since
11 1984.

12 Q. So that let me just see if I understand this.
13 Hypothetically if it's 1984 and you have file A in
14 your -- in your office and it was taken for this
15 review process that you've described here today and
16 it came back with, again hypothetically, 50 percent
17 of the materials in that file Bates stamped and 50
18 percent not Bates stamped, is it your understanding
19 that once it had been reviewed and came back, the
20 non-Bates stamped numbers -- non-Bates stamped
21 documents could be destroyed by you or purged in --
22 in a routine way?

23 A. Under our normal retention policy. But again,
24 my experience has also been about the only thing that
25 ever came back in my files with -- without these

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1 Bates numbers on them, if that's the proper term for
2 them, were truly operational kinds of administrative
3 kinds of things.

4 Q. Can you describe for me as best you can recall
5 the kinds of documents that you have seen come back
6 from review by -- by the lawyers that did not have
7 Bates stamp numbers on them?

8 A. What type of a document. None come -- are
9 coming to mind specifically, but I could generalize
10 the type of document that -- that might come back
11 without something like that. A personnel file, you
12 know, with a personnel evaluation, interesting enough
13 I've had some come back with Bates numbers and some
14 not. I don't -- never read them through to
15 understand why one might and why one might not, but I
16 suspect it has something to do with the narratives
17 that are written on those. That's very infrequent
18 that I would see that.

19 Something related to -- to simply, again,
20 operational -- a document that comes back that is
21 just a series of numbers and talks about our planning
22 schedules for getting operational issues out may not
23 come back Bates stamped. It had no narrative on it,
24 it was just numbers. I'm truly talking about
25 operational/tactical kinds of things that are not

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1 directive in any -- any sort but may have been
2 necessary to -- to carry out task A, task A being get
3 things from this marketplace to this market by
4 Tuesday of next week at 3:00 p.m., typically wouldn't
5 come back with a number on it. And that document is
6 kind of meaningless after next Tuesday.

7 Q. Okay. Anything else that you can think of?

8 A. Not just sitting here right off the top of my
9 head. I'm sure with some consideration I could
10 probably come up with some more examples, but --

11 Q. From time to time when a file of yours would be
12 reviewed and it came back, did you ever have occasion
13 to inquire about why certain documents either were or
14 weren't stamped, Bates stamped?

15 A. Never questioned it. It's not -- not part of my
16 job.

17 Our policy was real clear: We'd give them the
18 documents. They decide what -- what is important.
19 They -- they bring them back.

20 Q. And the why of selection of a particular
21 document is not something that you've ever been made
22 privy to?

23 A. No, sir.

24 Q. And the --

25 A. Other -- other than in general, obviously, we

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1 understood it was related to the various litigation
2 cases and so forth we may be faced with. So I could
3 probably sit down and, just reading some, predict to
4 you whether it was likely to get Bates stamped or
5 not.

6 Q. Sheer experience.

7 A. My experience would be, yeah, right, in having
8 seen them and so forth. I frequently wondered why,
9 but I've never asked anybody why.

10 Q. And the who with regard to who was making the
11 selection decisions is also not something that you
12 have generally been made privy to?

13 A. I knew it was -- is -- was our attorneys who
14 were responsible for the review in conjunction
15 with -- I believe Womble Carlyle is the -- the first
16 that works with us on our document-retention
17 program. But specifically who other than that, no.

18 Q. And based upon your experience, as -- as a
19 document in the sales and marketing area, is it true
20 that the files that have been collected in this
21 process have been files that were created by
22 employees of RJR Tobacco?

23 A. Yes, it is true. There may be files, as I said
24 earlier, that were also created outside and submitted
25 to us for consideration which were retained in our

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1 files and would have been captured as part of this
2 document -- documentation process.

3 Q. And those would have been the documents that
4 would have been generated by sales -- or I'm sorry,
5 by advertising or promotional agencies?

6 A. Precisely that kind of -- that kind of
7 situation.

8 Q. And in either case, whether these were documents
9 that were generated by RJR employees or received by
10 RJR employees from these outside agencies, all of
11 those documents related to the work that was being
12 conducted in the sales and marketing department by
13 RJR Tobacco employees; is that correct?

14 A. That's correct.

15 Q. And they were kept in files for purposes of the
16 work of RJR Tobacco; correct?

17 A. They were kept in files presumably to either
18 handle the work or because they were required to be
19 kept in our files by the annual notifications, again,
20 of document retention.

21 Q. And those files were the property of RJR
22 Tobacco; correct?

23 A. I would presume that to be the case. I don't
24 know legally whether they are or not. I would
25 presume they are the property since they were

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1 produced in conjunction with work done for R. J.

2 Reynolds or by R. J. Reynolds employees.

3 Q. Well if you were to resign from your position

4 today and leave the company, what is your

5 understanding of your ability to take any of the

6 working files in your office with you when you were

7 to leave the company?

8 A. And you just reinforced --

9 Those are company property. I don't take them
10 with me.

11 Q. And those --

12 A. So that tells me your previous question, they
13 are company property.

14 Q. And the files in your office and indeed in all
15 of the offices in the Reynolds Building --

16 Where -- where you have been housed for most of
17 the time while you've been employed at R. J. Tobacco;
18 correct?

19 A. All of the time that I have been employed by R.
20 J. Reynolds Tobacco.

21 Q. -- that is a secure location; is it?

22 A. Yes, it is. You -- it is secure from the ground
23 floor up.

24 Q. And in order to enter the building as an
25 employee, you have to have a security pass?

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1 A. You have to have an employee security pass. If
2 you're a non-employee, you have to secure one; you
3 have to have your guest meet you and escort you to
4 whatever office or facility you're going to.

5 Q. So that access to the building by the public
6 generally is not permitted.

7 A. No, sir, it is not, without specific purpose.
8 And most offices have locks on the doors, and all
9 desks have locks and keys.

10 Q. From time to time have you found within the
11 files that are under your control any documents
12 contained within those files that you believe were
13 not created by or received by an RJR employee as part
14 of that employee's job responsibilities?

15 A. I'm not sure how to -- I'm not sure --
16 Could you cite an example to give me a feel for
17 what you're talking about? I'm not sure what you
18 mean.

19 Q. Well I'm talking about now --
20 Earlier we mentioned that -- you mentioned that
21 if they came in and said we want your files, you --
22 you might be free to say, "Well this is a personal
23 file, not a company file." I'm now talking about
24 a -- a company file, a working company file, and the
25 question I have is: Do you --

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1 Have you from time to time or at any time found
2 within those company files documents that you believe
3 were not either created by or received by an employee
4 of sales and marketing as part of that employee's
5 job?

6 A. Not that I can think of sitting here. I've -- I
7 don't recall ever having found a document like that.

8 Q. And based upon the criteria for document
9 selection and production that you understand,
10 especially talking about like the personal materials
11 that you have had from time to time that weren't
12 collected, if such a personal piece of information
13 like your bank statement somehow got misfiled into an
14 employee file, that would not be the kind of document
15 that you understand would be selected for review and
16 production in any of the tobacco-related litigation?

17 A. Well using your example of a bank file, I --
18 I -- and if -- sorry about the terms, but I think you
19 said Bates number, I can't imagine that someone would
20 put a Bates number on that and -- and keep it to
21 begin with. So no.

22 Q. And in all of the time that you've been an
23 employee of RJR Tobacco, have you found in any of
24 your files documents that you believe were forged?

25 A. Forged?

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1 Q. Yes.

2 A. No, sir, not that I'm aware of. Not that I can
3 think of sitting here.

4 Q. Or any documents that -- that purported to be
5 authored by an employee when it was really authored
6 by some other person?

7 A. No, not --

8 Nothing that I'm aware of or comes to mind.

9 You mean planted?

10 Q. Yes.

11 A. I'm not aware of any.

12 Q. And as a manager, if you were to encounter in
13 any files information which you believed were forged
14 or not produced by employees as signed or authorized
15 or as written on the document, would you have kept
16 those documents in the file or removed them from the
17 file?

18 A. Well I -- what I first would have --

19 I'm not sure how I would have become aware they
20 were forged. I mean I assume a document --

21 Unless I had direct knowledge that an employee
22 reporting to me didn't do this document, I wouldn't
23 know that they were forged, and they would,
24 therefore, stay in the files. If I was specifically
25 aware of someone forging a document or creating a

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1 document under a bogus set of circumstances, I would
2 probably call management's attention to it, perhaps
3 legal department's attention to it. I've never faced
4 the situation, but obviously there's something going
5 on and we'd want to know what to heck was going on.

6 But if I --

7 I will tell you more probably I wouldn't know,
8 and therefore the document would stay in the files
9 and would have been captured as part of the retention
10 policy.

11 Q. I think I have just one final question for you.
12 I want a point of clarification. Earlier when we
13 talked about the materials that were generated by
14 outside advertising agencies when a campaign was
15 under way and -- and in development, those materials,
16 whether or not the campaign was ultimately launched
17 or not, were paid for by RJR Tobacco; correct?

18 A. That's correct.

19 Q. And they became the property of RJR Tobacco;
20 correct?

21 A. Yes, sir. I --

22 MR. JONES: Note my objection to the extent
23 it calls for a legal conclusion. You may --

24 A. I mean I presume they did since we paid for
25 them. I think -- yes.

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1 Q. And you would have expected that those files of
2 the advertising agency and all documents related to
3 that campaign would have been turned over to RJR
4 Tobacco?

5 MR. JONES: Note my objection.

6 A. Would have expected that it all be turned over?
7 I would expect, as our property, that they would send
8 it to us.

9 Q. Correct.

10 A. Yes. And in fact that was my experience while I
11 was there in the marketing department.

12 Q. And that was without exception in your
13 experience; correct?

14 A. I don't know if I would say that was without
15 exception. I may un -- have been unaware of an
16 exception.

17 Cite an example: If an agency worked on
18 something and never showed it to me, they would
19 therefore have the materials and I wouldn't know it.
20 So I can't say without exception. But that was my
21 general understanding of the expectations, was the
22 materials, they were produced for us, were to be
23 given to us.

24 MR. FINZEN: All right. Those are all the
25 questions that I have.

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1 MR. JONES: Okay. Just give me one
2 minute.

3 THE REPORTER: Off the record, please.

4 (Discussion off the record.)

5 (Deposition concluded at 12:00 o'clock
6 noon.)

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1 C E R T I F I C A T E

2 I, Richard G. Stirewalt, hereby certify
3 that I am qualified as a verbatim shorthand reporter;
4 that I took in stenographic shorthand the testimony
5 of RICHARD M. SANDERS at the time and place
6 aforesaid; and that the foregoing transcript
7 consisting of pages 1 through 138 is a true and
8 correct, full and complete transcription of said
9 shorthand notes, to the best of my ability.

10 Dated at Charlotte, North Carolina, this
11 18th day of April, 1997.

12

13

14

15 RICHARD G. STIREWALT

16 Registered Professional Reporter

17 Notary Public

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1 C E R T I F I C A T E

2 I, RICHARD M. SANDERS, the deponent, hereby
3 certify that I have read the foregoing transcript
4 consisting of pages 1 through 138, and that said
5 transcript is a true and correct, full and complete
6 transcription of my deposition except:

7

8

9

10

11

12

13

14

15 RICHARD M. SANDERS

16 Deponent

17

18 Sworn and subscribed to before me this day
19 of , 1997.

20

21

22

23 Notary Public

24

25 My commission expires .

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